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✓ FISHERY CONSERVATION AND MANAGEMENT  
ACT OF 1976

5-2

HEARING  
BEFORE THE  
COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE  
NINETY-FIFTH CONGRESS

STANFORD  
LIBRARIES

SECOND SESSION

ON

FISHERY CONSERVATION AND MANAGEMENT ACT  
OF 1976—P.L. 94-265

JANUARY 9, 1978

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# FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

(Public Law 94-265)

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MONDAY, JANUARY 9, 1978

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Portland, Maine.*

The committee met at 1:45 p.m., at the Portland City Council Chambers, second floor, Portland City Hall, Portland, Maine; Hon. William D. Hathaway presiding.

## OPENING STATEMENT BY SENATOR HATHAWAY

Senator HATHAWAY. The Commerce Committee hearings on the Fisheries Act will come to order. I want to apologize to you for being late. My plane came into Portland and couldn't land because of high winds. We had to go back to Boston and drive up from Boston.

I understand that some of the witnesses have been likewise inconvenienced.

We had the highest tides along the coasts, I understand, since 1925. I should say before I make an opening statement that whatever disaster relief is going to be necessary, and I think there will be some, I will be glad to help those who need it.

I should mention at the outset that we have a formidable list of witnesses. We are scheduled to start at 10:30 this morning and go to 4 p.m. this afternoon.

I have to ask the witnesses to please summarize their statements, because starting at this late hour, I have to leave myself not at 4 p.m. but at 5 p.m. I think we can get everybody in, if everybody cooperates and summarizes their statement, rather than read them in detail.

The record will be open for 30 days after this hearing for any additional statements that any of you want to put in.

In keeping with brevity, I won't make a long opening statement I had prepared. Instead, I will read a short one. I asked Senator Magnuson, chairman of the Committee on Commerce, Science, and Transportation to hold these field hearings in Portland, because I felt that it was important that during this year in which Congress will be overseeing the implementation of the act that we offer the fishermen, the processors, government officials, and other affected persons of New England, the opportunity to provide us with their perspectives on the act and how it is functioning.

Sentors Durkin and Muskie were unable to be here. Senator Muskie has a prepared statement which I will put in the record. I know that you are very much concerned about the closing that we had on certain kinds of fish from the 23d of December for about a week.

**STATEMENT OF HON. EDMUND S. MUSKIE, U.S. SENATOR FROM MAINE**

May I first say welcome to Maine to my good friend John Durkin of New Hampshire, and offer my thanks to Senator Bill Hathaway for making today's hearing possible. When we adopted the 200-mile limit, we said it was not an end, but a beginning.

Today, we are trying to judge how good a beginning we have made; whether we are on the right path to economic health for our fishermen; and what changes we need to make in the 200-mile limit law. The implementation process for a piece of legislation as far-reaching as the Fishery Conservation and Management Act is a delicate one. Its enforcement requires patience and flexibility as each agency within our government adjusts itself to new responsibilities and new working relationships.

During FCMA's first year of operation, a number of issues have surfaced for which the initial legislation and subsequent regulations may not provide an adequate framework to manage this resource. The uneasy relationship which has developed between the Regional Councils and the Department of Commerce must be remedied. We must determine whether the present quota-setting mechanism is fair—for our needs and for foreigners dependent on the protein supplies off our shores. Does this mechanism provide our industry with enough room to grow? Are the conservation safeguards adequate to ensure a healthy resource in the future?

What about enforcement—is the foreign observer program adequate? And we must review the domestic record—do that conservation measures contained in this legislation have the endorsement of our own industry or are they being ignored?

A revitalized fishing industry can provide a healthy economic livelihood and we in Congress need your help to determine if we can rebuild this industry within the context of the present law.

I commend Bill Hathaway for aggressively working to get a hearing in Maine, and I thank the Commerce Committee for agreeing to come to hear our side of the story.

Senator HATHAWAY. I know that is an important issue to you. I hope we will discuss not only that issue, but all the many other issues that have arisen since the 200-mile-limit legislation has been in effect.

Without further ado, I would like to call as the first witness, Dr. Robert Hanks, Deputy Director of Northeast Region, National Marine Fisheries Service of Gloucester, Mass.

**STATEMENT OF DR. ROBERT HANKS, DEPUTY DIRECTOR,  
NORTHEAST REGION, NATIONAL MARINE FISHERIES SERVICE,  
GLOUCESTER, MASS.**

Dr. HANKS. Senator Hathaway and members of the staff, members of the press, ladies and gentlemen of the audience. I am Dr. Robert W. Hanks, Deputy Regional Director, Northeast Region, National Marine Fisheries Service, and I have been asked to appear there today to comment on the first 9 months of the implementation of the FCMA of 1976.

I would like to comment briefly on this reduction in foreign effort, the operations of management councils established by the act, the increase in public participation in management activities, the problem surfaced by implementation of the act, and some highly visible areas that may need congressional study and action.

The reduction of foreign fishing effort on the rich fishing grounds of Georges Banks and the Southern New England area of the North-west Atlantic has been the most visible and one of the greatest benefits to the United States from the implementation of the Fisheries Conservation and Management Act.

Not only have the number of vessels been reduced, but the areas in which foreign fleets are allowed to fish for their assigned quotas are far more limited.

Directed fisheries by foreign vessels are only allowed for a few species, those for which there is a significant surplus above the harvest capability of domestic fishing vessels.

In 1977, only the hakes, the squids, herring, mackerel, and other incidental species or trawl fisheries were allowed to be captured. In 1978, further reductions will occur in the quotas and no directed fishery for herring or mackerel will be allowed.

With reduction in allowable harvest for foreign nations in our Fishery Conservation Zone has come a parallel reduction in the number of vessels off our shore.

In 1976, there was a total of 750 vessels from 10 nations fishing in what is now FCZ; with a peak abundance of 291 vessels during February of that year.

In 1977, with implementation of the act, only 370 vessels, from 10 nations, were in the FCZ, and the greatest abundance was only 74 vessels in August.

Further, the system of permits, the requirement to check in and check out of the FCZ, the requirement for maintenance of precise logbooks and timely reporting of catches, and the requirement to accept U.S. observers on board foreign vessels, as we determine their deployment, has led to a much more effective means to monitor the foreign harvest and to enforce management measures.

I believe our first year of experience under this regime has been gratifying. We have had reasonable cooperation from foreign vessels. Only 32 of 314—10.2 percent—of the vessels under permit were cited for violations. There have been cooperative scientific stock evaluation ventures and as a rule our on-board observers have been impressed with the concern of foreign fishermen to abide by the U.S. regulations.

As an example of what I consider improved conditions, there has been a significant reduction in the interference with fixed fishing gear.

There has been less interference with mobile fishing gear, and a significant reduction in the "incidental" catch of prohibited species—all because we have been able to establish "windows" that contain foreign fleets by season, area, and species. These actions will contribute to stock recovery and greater catches by U.S. fishermen.

Considering that this has been the first experience of most U.S. fishermen with tightly regulated fisheries, the U.S. industry's record is excellent. Through December 21, 1977, there were 1,120 vessels in the Northeast region with groundfish permits and only 89 or 7.9 percent had been cited for violations. Harvest recordkeeping has generally been good and cooperation in providing information has gone beyond the requirements of the law.

Implementation of the Fishery Conservation and Management Act has resulted in a deeper involvement by the public and industry in the complexities of fisheries management through the establishment



of the regional councils. The composition of the regional councils is such that the individuals represent a broad cross section of fishing and fishery-related interests. Commercial harvesting, processing, and recreational interest are evident on all councils.

The academic community is also well represented, but other factors are absent; notably marketing and consumer interests have not been nominated by the Governors of participating States and have, therefore, not been available for selection to Council membership.

However, compensation for such lack of direct representation is assumed through the participation of the "obligatory" member from each State, the principal marine fisheries authority from each State, and the Regional Director of the NMFS. In addition, the establishment of large advisory panels should also compensate for any lack of direct representation on the Council.

Since the term of Council membership is a staggered 3-year appointment, we can expect the interest composition of the Council to vary over time. One additional, and in my opinion, very positive, factor is the increasing public participation in Council meetings, and the various public meetings and hearings relative to management plan development.

This first year has been a very valuable learning process. With the authority for greater direct influence on the management process has come the responsibility to broaden viewpoints.

Public attendance and participation in Council meetings and at public hearings has guaranteed that a broader spectrum of concerns and ideas for management procedures have been given consideration.

Future development of nontraditional fisheries may prove to be the greatest eventual benefit to the U.S. fishing industry. We look for a government-industry cooperative effort to catch, process, use, and export such species as mackerel, squid, and hakes that are presently underutilized by domestic fishermen.

The National Marine Fisheries Service is involved in several development studies, and we believe there are additional programs that could be implemented by Congressional action. A study is currently underway to determine the domestic and export markets available for latent or underutilized species, and another is designed to determine the economic soundness of expanding the mackerel and silver hake industries.

In relation to implementing feasible development programs, Congress could consider the possibility of a fisheries development loan program, perhaps with a no-payback clause, if the industry is developed to an adequate level in economically depressed areas.

There is also the possibility of expanding the traditional U.S. fisheries after stock recovery is well on its way. However, it should be clear that the supplies of cod and haddock off our shore will probably never achieve a level adequate to meet U.S. consumer demand; we must turn to other species to meet this demand, and it is doubtful if we will ever supply all the fish product necessary for U.S. consumption.

Although the overall impact of the FCMA has been very good, there have been problems associated with its implementation that need to be addressed. One of the most frustrating has been the procedure involved in implementing the Fishery Management Plans.

After a plan has been developed by one or more Regional Councils, it requires at least 6 months to get it on line. This has created many problems for the Councils, the National Marine Fisheries Service, and the fishing industry.

The question arises whether it is appropriate or necessary that the plans be subject to the full NEPA process, when so many other public participation requirements are built into the FCMA Act. It would also be very helpful if a more simplified process for amending established Fishery Management plans, while assuring public review and input, could be developed. It seems reasonable that perhaps only a complete change in the direction of management should warrant the same time and effort required to implement a completely new plan. It should be a relatively short and simple matter to make management changes when new biological, economic, and/or social information becomes available.

Again, any such procedural changes must recognize the technical requirements for public scrutiny and input.

Emergency regulations have been required as an interim management measure while Fishery Management plans are going through this lengthy review process. Because they are emergency measures, they are generated on short notice and this has often resulted in misunderstanding and confusion. We expect that as the orderly development plans takes place, the need for emergency measures will be reduced. During this first year of operation, emergency measures and the communication of emergency regulations have posed real problems for the government, the councils, and the industry.

Problems have also been noted in the time span between the citing of domestic fishermen for violations and the distribution of civil penalty assessment notices. Fine collection from foreign governments has also caused some concern.

We believe that these are startup problems, that the legal questions are now resolved, and that the processes are now fairly routine. Not surprisingly, it has been found that exemption of State waters from Fisheries Management Plan regulations has occasionally hindered effective enforcement. It is expected that future State-Federal cooperative management measures will minimize this problem.

In the final analysis, everyone concerned with the Fisheries Conservation and Management Act during its first year of existence, from the top administrators to the fishermen, has been involved in a complex learning process. Learning involves communications and there have been some breakdowns all along the line. It is easy to say that these must be expected, but it is much more important that we all make a greater effort to improve the communication systems.

I know that the Councils are as concerned over this problem as we are. For our part, we are working with the National Weather Service to develop a regular message system for fishermen through their radio network, in which regulations, catch levels, closures, and other items of interest can be included with the marine weather forecasts. We are discussing with the Office of Sea Grant a more extensive use of the Advisory Service. We hope to develop a telephone hotline service in cooperation with the Council Advisory Committee.

In summary, we believe the implementation of the Fisheries Conservation and Management Act has had a major constructive impact this year, but that the real benefits in resource recovery and a stable industry meeting the Nation's need for fish products will only occur over time with the continued development of management plans and the continued cooperation of the fishing industry, councils, and government.

Senator HATHAWAY. Thank you very much, Mr. Hanks.

You have made constructive suggestions. What percentage of the foreign vessels now have U.S. observers on them? Do you know, offhand?

Dr. HANKS. We did have a short time ago somewhere around 20 to 30 percent. We have a total complement of 16 observers and, as the fleet has varied from as low as 10 or 15 to above 60 during the year, then these people had been deployed.

When we have the observers out there, they are moved around as well, fairly randomly, so the foreign fleets do not know just when they are going to be abroad and for what periods.

Senator HATHAWAY. Have they all been cooperative, the foreign fleets? Is there any particular nation that has not been?

Dr. HANKS. I expect that the country which had the worst record is the Spanish. We believe that much of this is due to their communication problem. In other words, through their country system, the fishing fleet captains have not received adequate instruction in what the regulations are. We have met on several occasions with the country representatives and with some of the fishing people and with people from Spain to try to educate them to what is necessary.

Senator HATHAWAY. Has the States' jurisdiction within the 3-mile limit caused you any problem?

Dr. HANKS. It hasn't been an extensive problem as yet. As we get into other management plans, I expect it very well may be as to those stocks that tend to range between the territorial waters and the fisheries conservation zone.

However, there is a problem of long standing; since we cannot regulate within the territorial sea, the question of where the catch comes from always arises when there are restrictions in the fisheries conservation zone.

Senator HATHAWAY. Let me ask you about the recent closure. You are familiar with that?

Dr. HANKS. Yes, indeed.

Senator HATHAWAY. I understand there was a certain quota set for the year.

Dr. HANKS. That is right.

Senator HATHAWAY. That was set when?

Dr. HANKS. The original quotas were set with the implementation of the act in the beginning of March, based on a management plan. Eventually, these became permanent.

The optimum yields—

Senator HATHAWAY. Was that done on the basis of public hearings?

Dr. HANKS. Yes, it was. It was the full process, Senator, under the act. But, as I remember, the first regulations were proposed on an emergency basis until the final regulations could be picked up. The

optimum yield, and I won't go into the description of how this is arrived at, because it is a lengthy thing, but, in general, it was taken this year from what had been developed in past ICNAF studies.

When that optimum yield which became the quota, let's say for groundfish this year, was essentially caught, by the end of August, at that time the option to either close the fishery, leave it open or establish emergency regulations arose and it was a lengthy period before—since this was the first year of operation—before all of the legal implications of what you could do were established. It was November 3 that the emergency regulations increasing the optimum yield to a higher level for this year and the other substances of that regulation were put into place for a 45-day emergency period. That took us through to December 18.

Senator HATHAWAY. Then there was a closure on the 23d.

Dr. HANKS. On the 23r. Analysis was made starting early in December, recognizing that the fishery is extremely dynamic and that the consequences of closure were extensive. The analysis of the biological consequences, as well as the economic and social consequences and, indeed, the international implications of closure and extension were looked at carefully. It was decided that the most responsible thing that could be done was to close the fishery for the brief period between the 23d and the 31st.

Senator HATHAWAY. It was closed to all nations?

Dr. HANKS. It was closed only to United States fishermen.

Senator HATHAWAY. You mean all other nations could fish it?

Dr. HANKS. For example, the ones that were primarily left were the Canadians; there was a fishery agreement with Canada.

They had the opportunity—that greement, by the way, superseded the FCMA—

Senator HATHAWAY. Was it an agreement entered into before the legislation was in effect?

Dr. HANKS. After.

Senator HATHAWAY. Was that on a quota basis?

Dr. HANKS. Yes; basically, it was the apportionments that had been assigned to Canada previous to the Act during the period we were in ICNAF.

Senator HATHAWAY. How much was that relative to the quota allotted to the United States?

Dr. HANKS. For example, with the cod, where we had originally taken all of the cod that was projected to be the allowable harvest—It was 20,000 metric tons, originally, in the management plan—about 3,500 metric tons of that was allotted to Canada. This was an agreement made previously under ICNAF.

Senator HATHAWAY. Some with haddock and flounder, roughly one-seventh?

Dr. HANKS. Roughly, in that area.

Senator HATHAWAY. They had not taken their share at that time?

Dr. HANKS. They had taken some of it. I could not tell you how much they had taken.

Senator HATHAWAY. That is monitored, of course?

Dr. HANKS. Yes.

Senator HATHAWAY. Of course, the year is over now?

Dr. HANKS. Yes.

Senator HATHAWAY. What other nations were involved besides Canada?

Dr. HANKS. There is no allowable catch for other nations. There is no quota assignment. That is one of the stocks indicated not to be under surplus. Obviously, it is not in surplus. There is no allocation, no totally allowable foreign fishing allowed. They can at some point take an incidental catch and return it to the sea.

In other words, no retention.

Senator HATHAWAY. So the only other nation is Canada?

Dr. HANKS. Basically.

Senator HATHAWAY. What do you mean, "basically"?

Dr. HANKS. Yes, Canada.

Senator HATHAWAY. I suppose you anticipate that incidences such as the one we have just experienced will occur in the future?

Dr. HANKS. We hope new management plans for 1978 and the management tools developed to look at those plans would reduce the problem of closure, if not do away with it completely.

As you may know, the emergency regulations in effect now set quarterly apportionments of the optimum yield and they allow the—the closure was a complete closure, you could not take a cod or haddock in your net, catch it—new regulations say no retention, no landing. You can't put a sign up that says, "Please don't go in." Obviously, in the course of fishing, you will catch some of these species. Under the new regulations you cannot retain them on deck.

Senator HATHAWAY. Is the quarterly quota that has gone into effect now a fourth of what the additional was?

Dr. HANKS. A fourth of the original optimum yield.

Senator HATHAWAY. Not the one put on with the emergency?

Dr. HANKS. No.

Senator HATHAWAY. When will you be holding further hearings to determine what the quota will be for the rest of the year?

Dr. HANKS. It is the Regional Council's basic responsibility, and they will hold hearings starting at the end of this month to early February.

Senator HATHAWAY. Where will they be held?

Dr. HANKS. All along the five New England States that the Council is responsible for and probably in the Southern Area, since they coordinate with the Mid-Atlantic Council.

Senator HATHAWAY. For how long will they hold the hearings?

Dr. HANKS. It is about a week period. The Council is represented today, and they will speak to that.

Senator HATHAWAY. Any number of fishermen can come in and testify and submit written statements?

Dr. HANKS. They are open public hearings and the record is open for 30 days, or whatever.

Senator HATHAWAY. Thank you very much, Doctor.

Our next witness is Mr. Spencer Apollonio, executive director, New England Fishery Management Council.

Be sure to talk right into the mike so they can hear in the balcony.

**STATEMENT OF SPENCER APOLLONIO, EXECUTIVE DIRECTOR, NEW  
ENGLAND FISHERY MANAGEMENT COUNCIL**

Mr. APOLLONIO. Senator, the chairman of the New England Management Council cannot be here today. He asked me to make a statement for the Council. I will try to summarize the points that I intended to make rather than read the statement to you.

Senator HATHAWAY. Thank you.

Mr. APOLLONIO. As Dr. Hanks mentioned it was clear when we embarked on a Management Act of this complexity that problems were inevitable and we have had them. Fortunately, to date none of them have been as serious as one or two of them might have been. There is a need to try to improve the approach to the Act. I think there were three general areas from which the problems came.

Clearly, the fact that the industry itself was not fully aware of the full implications of what the 200-Mile Act really said, that there was going to be domestic as well as foreign management, was a source of some of the problems.

A potential source of problems also is within the makeups of the councils themselves. The nominations to the councils, of course, go to the Secretary of Commerce from the governors of the New England States. In many cases those nominations have been excellent. In some cases the governors have been at fault in failing to submit timely nominations, as you well know. Corrective legislation, I think, may be needed to make sure that the councils have the most qualified people nominated to them. I think the industry, also, should try, if it can, to develop within itself an effective means of submitting qualified names to the governors so that the governors are fully aware of who the most qualified people are for nominations to the councils.

A third general area of concern, as Dr. Hanks mentioned, is the long time required to implement a management plan. The legalities of the Act itself, and of a number of other Acts which bear upon implementation of a plan, have created a really difficult situation for implementing a management plan.

I think a careful review is needed of all the regulations, interpretations of regulations, administrative decisions which bear upon the operation of the councils and on the implementation of the plans.

I don't see any serious deficiencies in the Act itself at this time. The Act seems to provide all of the means that are needed in order to manage the fisheries of this country adequately. We don't really know at this time whether there are serious deficiencies in the act because no plan has yet been developed and implemented according to all of the national standards and the requirement of the Act. We won't know whether there are any real deficiencies in the Act itself until such a plan has been developed and implemented and until real deficiencies turn up showing deficiencies in the Act itself.

I would like to mention a number of specific points. I think some amendment is needed if the councils are in fact to have an effective voice and an effective review of the foreign fishing permit applications. The conclusion at this point seems to be that the councils really

don't even though it was the clear intent of Congress that the councils take a careful look at the applications by the foreign nations for foreign permit applications. It just doesn't seem to work very effectively at this point.

Another point I would like to mention is that the Act should be explicit that the members of the council have full liability protection by the Federal Government for the consequences of their actions when they are working within the restrictions of the Act in implementing management plans. That is not clear at all.

The Justice Department has given a tentative ruling, but if you are sitting on a council in the front lines, a tentative ruling, I believe, is not sufficient. I think it should be made—

Senator HATHAWAY. What trouble do you anticipate getting into?

Mr. APOLLONIO. There is always a possibility that some interest that may be injured by a management plan, whether it is the public sector, an environmentalist group, a consumer group, processors, industry, foreign governments, any one of them, could sue and hold council members liable for the consequences of the management plan.

Senator HATHAWAY. Has that ever been done?

Mr. APOLLONIO. It has never been done but it is a matter of concern to council members who vote and whose vote determines the course of a management plan. It is on their minds. They would feel much freer in acting if it was made clear that they had the full protection of the Tort Claims Act that protects normal government employees. It should be remembered that these are not government employees. They are part-time people. But they are in the front lines and they do vote and their votes determine how the management plans should go. They are possibly liable and they would like protection clarified.

As one or two council members have said, "I'm not about to put my wife's and my children's inheritance on the line for a particular management program."

It should be made clear, also, that it was the intent of the Congress that the councils do have the primary responsibility for managing the fisheries by writing and implementing management plans.

And, further, it should be made explicit that they have full discretionary authority to use the resources which are made available to them to develop those required management plans.

I would like to try to mention a couple of points from the fishermen's point of view, if I may. I will try to summarize the intent of the comments.

One, that legislation similar to legislation passed on behalf of the agricultural industry may be needed if the fishing industry is to respond adequately to the restraints of management plans. That existing legislation, as I understand it, allows the agricultural industry collectively to undertake certain kinds of activities on its own behalf, which is presently illegal for the fishing industry.

If the fishing industry were to attempt to undertake such activities at this time, in dealing with the distribution of catch, allocation of quotas among its members, it is my understanding that it would be slapped with a restraint-of-trade suit.

If they had a common agreement among themselves as to how a restrictive quota were to be divided up among the fishing vessels and processors, it might be illegal at this time, but it may be needed.

I don't believe a management plan can accommodate equitably all of the regional differences that exist within the ground fishery, for example, in New England. The councils can write plans in general terms which will accomplish the purpose of the act. To make sure that this management plan affects the industry equitably, fairly, through all of the diverse segments of the industry in New England, it may be that the industry itself has to get together and agree who shall catch the fish in the spring and in the summer and the fall.

That is the first point I wanted to make.

The second point is that it is clear in some of the fisheries that there is too much harvesting capacity right now and that it is increasing. Some of those vessels will have to be diverted to other fisheries or removed from the fishery, to be blunt about it.

There will have to be some kind of compensation to those fishermen dislocated if the stocks are to recover. It is being done in the North Sea now. It could be done in other areas.

I don't know how it can be done equitably. It may be an unpalatable suggestion in the industry and in Congress. But it should be explored.

Senator HATHAWAY. What countries are doing it in the North Sea?

Mr. APOLLONIO. The Common Market is doing it in the North Sea now. They are saying to the vessels, we are going to restore the stock, therefore you cannot fish, but we will compensate those who have an established record in fisheries because of loss not of their own fault.

It is a very new idea.

Finally, there are administrative points that have to be clarified. I preface it by saying if the Council abided by every applicable regulation or by the diverse interpretation of the Act, it couldn't function. We have ignored certain regulations. We have protested against others and we have battled and been criticized over other regulations.

I think it is clear that there is a need to review all of the regulations which apply, particularly I believe the Federal Advisory Act of 1974. I don't believe it was the intent of Congress that this should apply throughout to all functions of the Council and its various subcommittees. If it does, it is my conclusion the councils just can't function.

As Dr. Hanks mentioned, the Observer Program is operating and the Council believes it is operating well. We believe it must be strengthened and we believe it is the intent of Congress to strengthen the Foreign Observer Program. There is a meeting with Secretary Kreps tomorrow morning on this point. We hope the Council's recommendations to increase the number of people on the Observer Program will be followed.

Senator, I think that is as much as I should say at this time by way of summary. We appreciate this hearing. We request another hearing in a couple of months, perhaps, in which we may be able to give more time to more detailed recommendations on what could be done to improve this Act.

Thank you.

Senator Hathaway, thank you very much.

Senator HATHAWAY. Do you have anything to add to what Dr. Hanks said in regard to the recent closure?



Mr. APOLLONIO. No; I don't think I do. There was a closure, that is for sure.

Senator HATHAWAY. Do you think the new Advisory Panel will help give industry input to the Council?

Mr. APOLLONIO. Yes. I might mention that we have been using our Advisory Panel for several months, but we have been doing it illegally. It was formally approved only during the last few weeks. That, for example, is a regulation that needs to be looked at. We do intend to use the Advisory Panel.

Senator HATHAWAY. From your own experience you would endorse the loan plans that Dr. Hanks mentioned?

Mr. APOLLONIO. With caution, because I do not believe we need additional effort in the fishing industry in New England. We have more than enough boats right now. For long-range planning it may be that once the stocks are restored, then the fleets should be expanded.

Senator HATHAWAY. Be careful; you are talking about my bill.

Mr. APOLLONIO. I said I endorse it cautiously.

Senator HATHAWAY. Don't we need improved dockside facilities?

The loan program is simply a guarantee program.

Mr. APOLLONIO. Yes.

Senator HATHAWAY. Thank you very much.

Mr. APOLLONIO. Thank you.

[The statement follows:]

STATEMENT OF SPENCER APOLLONIO, EXECUTIVE DIRECTOR, NEW ENGLAND REGIONAL FISHERY MANAGEMENT COUNCIL, PEABODY, MASS.

Mr. Chairman, the Chairman of the New England Regional Fishery Management Council asked me to speak for the Council to this Commerce Committee Hearing.

The implementation of the Fishery Conservation and Management Act of 1976 has suffered from a number of problems, but probably not more than nor none of greater severity than should be expected upon the initiation of a program as complex as the rational and expeditious management of the nation's commercial and recreational fisheries—a mandatory task which is totally new, never seriously attempted in the past, and undoubtedly inherently resistant to quick and easy solutions.

Inevitably, there have been a number of problems—some of them potentially serious for the fishing industry. The New England Council welcomes this series of Commerce Committee oversight hearings to review the problems. The Council hopes that at a subsequent hearing—perhaps in a couple of months—it will be able to present a detailed statement on the problems and remedies as the Council sees them. Time did not permit that analysis at this hearing.

There are several possible sources for problems in implementation of the Act. The very newness of the concept of rational and total fishery management within the rather demanding National Standards of the Act is a potential source of problems. It is clear that the fishing industry did not fully understand the 200 mile law itself, nor that it requires management of domestic as well as foreign fishermen, nor the full implications of that requirement of the law. Indeed, much of the industry may not now understand or accept the rationale for that requirement of the Act.

Another source of problems lies within a veritable jungle of administrative decisions, regulations, and differing interpretations of the intent and content of the Act. This tangle clearly will make it very difficult for the management councils to act quickly and effectively, using their expert knowledge of regional fisheries, to meet problems which may not be predictable or amenable to long-term planning.

Further, there are problems within the councils themselves. In some cases the state Governors have been delinquent in making timely and qualified nomina-

tions to the Secretary of Commerce. The entire concept of effective regional management councils will stand or fall on the effectiveness of the governors' nominations to the Secretary. The industry, both recreational and commercial, may want to create some standard procedure for submitting qualified candidates for the Governors' consideration.

The council members themselves, not surprisingly, have had difficulty in finding the most effective means of responding to very difficult and extraordinarily time-consuming problems—problems which until now had in fact not been managed by anyone! It must be remembered that a diverse group of councillors, meeting as a council for a few hours approximately once a month, must find an efficient and productive way of formulating policy and directing or interacting with the energies of a professional staff, a scientific advisory committee, 125 fisheries advisors, two other regional management councils, the regional office and the regional fishery center of the National Marine Fisheries Service, the Council on Environmental Quality, and a few other agencies and groups of people.

These are the general categories or sources of difficulties in implementing the FCMA. I should mention a few specific examples from these categories, some of which are not serious, and some are.

Sufficient time has not elapsed yet to reveal any serious deficiencies within the Act itself. Those deficiencies will be revealed only after a management plan, prepared in accordance with the requirements of the Act and conforming to the National Standards, is shown to be clearly ineffective. Such has not yet happened. It might be well to keep in mind, in the meantime however, that the National Standards of the Act and the required contents of management plans may be overly restrictive or mutually exclusive to the point that unavoidable failure to comply could result in litigation which could nullify the intent of the Act. Only experience will show whether the Act requires this modification.

The Act probably does require amendment if the councils are in fact to have a significant influence on the issuance of foreign fishing permits. The present system does not really permit an influential role for the Council in the review process.

Further, the Act should be amended to make it explicit that the Council members have full liability protection by the federal government while acting responsibly within the directives of the Act.

The Act also should make clear the intent of Congress that the Councils have the primary responsibility to manage the fisheries and that they have full discretionary authority to use the resources available to them to develop the required management plans.

I would like to try to say a word about the Act and the Councils from the fisherman's point of view. The sudden and unexpected implementation of seriously restrictive management on previously free fisheries was a shock and clearly caused substantial problems. The industry is at fault for not previously informing itself adequately of the full implications of the Act and planning accordingly. The Council is at fault for not anticipating more carefully the disruptive problems which in fact very rapidly developed.

After the initial shock, the New England fishing industry is now paying attention, is fully aware of what the Act really means, and is making an admirable effort to work with the Council in finding practical solutions to substantial problems. These problems may be similar to those which agriculture has faced and managed in the past. Some of these solutions may be applicable to the fishing industry, but some of them were only possible after Congressional action. I would suggest that the management of fisheries problems be re-examined to determine whether Congressional actions similar to those in agriculture may be necessary. I do not mean subsidies, but have in mind legal authority for co-operative and institutional practices necessary for adequate response to and planning for the restrictions of regional management. I do not believe the Councils as presently constituted can possibly provide for all the diversities of the fisheries within their regions, but certain institutional practices, as legalized and developed to solve agricultural problems, could be implemented by the fishing industry itself to accommodate the diversities of the industry. These possibilities should be examined carefully. They may in fact make possible adequate planning by the industry itself—a capacity that now appears to be seriously deficient.

Within the confused area of regulations, administrative decisions, and interpretations, there is, again not surprisingly, much that could be said. It is our

experience that if the New England Council abided by every applicable regulation or the diverse interpretations of the Act, in fact it could not function. We have deliberately ignored certain regulations, made valiant but unsuccessful efforts to conform to others, and have been repeatedly criticized for challenging other regulations or excessively restrictive interpretations of still others. Suffice it to say that there is a great need for a comprehensive review of all these administrative requirements and a uniform application of appropriate regulations to all regional councils. I would like to mention three specific examples. I do not believe that Congress could have intended that the Federal Advisory Committee Act apply to all activities of the Council. If indeed it does, the councils cannot function.

Equally serious, the New England Council believes the foreign fishery observer program is not being administered according to the intent of Congress. The limited operation of the program to date has been most valuable, and the New England Council has repeatedly recommended the program be expanded, strengthened and administered as Congress clearly intended—so far without success.

Finally, the administrative procedures and legal requirements for implementing or amending a management plan are complex, excessively time-consuming, subject to seriously divergent legal interpretations, and virtually incomprehensible to the Council and the public. Even assuming that they were understandable and uniformly interpreted, they may seriously impede timely modification of management plans.

There is one clear need for further Congressional action. That is providing in some way for those fishermen who may suffer dislocation or displacement as a result of management plans. In too many fisheries it is clear that it will be extremely difficult to restore stocks, indeed even maintain certain stocks at depleted levels, with the existing fishing capacity. And that capacity in New England has expanded faster than the Council's ability to develop effective management. Some provision must be made for those who must be diverted out of the fishery if the stocks are to be rebuilt.

In spite of this list of problems. I do not wish to create the impression that the Act is not working, nor the councils are not functioning, nor that progress is not being made. All these things are in fact happening. It is very clear that Congress deliberately created a new form of government, as Senator Magnuson pointed out, to make these things happen. Undoubtedly, the passage of the 200-mile Act raised everyone's expectations. The problems are no more than should be expected when a new form of government must deal with an accumulation of problems long overdue for solution and which prohibit the immediate gratification of everyone's expectations. Under these circumstances, a highly flexible and deliberately pragmatic approach is essential and the Act, the operations of the councils, and the interpretation and administration of the regulations should be reviewed in that light.

Senator HATHAWAY. The next witness is Dr. Vaughn Anthony, research director, Department of Marine Resources, Augusta.

**STATEMENT OF DR. VAUGHN ANTHONY, RESEARCH DIRECTOR,  
DEPARTMENT OF MARINE RESOURCES, AUGUSTA, MAINE**

Dr. ANTHONY. Mr. Vinal Look wanted to be here today, and he asked me to be here to represent the department because he had to be in Washington to assist in United States-Canada bilateral discussions.

Considering the complexity of the issues involved, the Maine Department of Marine Resources believes that the Fishery Conservation and Management Act of 1976 is a reasonable means of implementing management. From the beginning, of course, it has been clear that time would be required for the Regional Councils to become organized, and for them to begin the difficult work of developing management plans for each species of concern.

As we see it, some of the continuing problems faced by the Regional Councils and by the National Marine Fisheries Service in implementing the intent of the Act are as follows:

First, we believe there is a serious lack of understanding on the part of the commercial fishing industry and the general public as to what actions must be taken as required by the law. There are, of necessity, many complex technicalities involved which are difficult for the layman to understand. Misunderstanding on the part of the industry and the public, however, seems to go beyond the legal complexities, and it has been difficult to communicate the fact that the Act does not apply just to foreign nationals but also affects directly the domestic industry. The Act requires management of the fisheries resources, and management, of course, implies regulations and restrictions. As might be expected, such regulations and restrictions are often misunderstood and are seldom popular. In spite of many lengthy public hearings this basic fact of life has not been effectively communicated to the industry or the public.

It is not explained to the public why they are restricted. Fishermen think they can't hurt the source, so why should they be restricted. At least, a partial solution to this problem of communication with the industry and the public might be to establish within each Regional Council the position of Council Communications Officer whose primary duty would be to keep the industry and the public informed on all aspects of the Council's work. Additional funding for such positions may well be required.

From time to time, additional communications problems have also surfaced between the Councils and the National Marine Fisheries Service. Since it is essential that these two groups work closely together on the development of all management plans, we believe it is absolutely vital that the federal agency keep the Councils informed at all times, and that it avoid taking unilateral action on any issue without consultation with the Councils.

I think communications is probably the biggest problem we have in implementing any management program today.

A second and very important problem that has not been mentioned is that the Management Act requires that the plans take into consideration the best scientific information that is available, but the law does not specify what is sufficient scientific information on which to base such plans. So far, therefore, the Councils, in order to get on with the job, have had to make do with whatever data are presently available, and many have recognized that in too many instances what is available is indeed limited.

Senator HATHAWAY. You mentioned this council communications officer. Doesn't the advisory panel serve that function?

Dr. ANTHONY. I don't believe so, no.

Senator HATHAWAY. Why?

Dr. ANTHONY. As Spencer said, they have been in force only 2 weeks. We have had a lot of complicated problems to date. There have already been a lot of misconceptions. I think we need an institution of communication, perhaps through the newspapers, or something like this to get out to the people. I don't think we can rely on enough people in the industry through word of mouth to get the proper information back to the people. This has become a major issue with segments of the industry. With some justification, fishermen have objected to quotas established as part of a management plan on the grounds that there simply was not enough scientific information available to support the regulations which have been imposed on them. They have ar-

gued, in fact, that their own observations often do not jibe with those of the Federal scientists, and the result has been a serious difference of opinion and, on occasion, a credibility gap between fishermen and scientists.

Dr. ANTHONY. Again, this is partly a communications problem, but additional information is required in order to solve this problem.

We would recommend, therefore, that the National Marine Fisheries Service and, as far as New England is concerned, its facilities at Woods Hole—received increased support for its research activities so that much more data can be developed on a much more frequent basis. More biological sampling of stocks urgently needs to be done and more catch and effort data collected, and this will require more people and more funding.

In the past, considerable reliance has been placed on survey information obtained through the use of foreign fishing vessels. As fewer foreign fishing vessels are permitted in the management zone, this source of information will decrease, and greater efforts by NMFS scientists will become essential.

In any management plan, the interrelations of the various fisheries are vital, and this is another area where present information is either totally unavailable, or at best inadequate. Sampling the discards and by-catch at sea is required to understand such interrelationships and to enable coordination of the various plans.

The mortality due to the shovel can be very great. We don't have a handle on the amount of this kind of mortality. But a small amount of small fish shoveled overboard can amount to a serious mortality rate. In some cases, it can have a great effect due to the fact that these fish are small when they are discarded.

At the same time that the Federal research effort is increased, it is important that the States' role also be strengthened. Federal funds, we believe, should be made available to the States for them to conduct in-shore surveys which would compliment the offshore work of NMFS. Such assistance is especially important to Maine in view of the length of the Maine coast, its rocky bottom, and the limited number of survey stations in the NMFS abundance surveys in the northern Gulf of Maine. Near-shore fisheries on cod, for example, may exist on local stocks which are quite different from other cod stocks in southern areas of the Gulf of Maine. We have insufficient data to support that at this point.

It is also important for Maine to have an effective interface with Canada regarding migrating stocks, since Maine shares a common border with the Canadians. Herring which migrate long distances, for example, provide a major fishery of concern to both nations. The Councils also need to take a greater role in the U.S.-Canadian discussions on joint management.

At recent U.S.-Canadian discussions Canada felt that they should be the sole manager for white hake in the Gulf of Maine. Anybody that has grown up on the Maine coast that doesn't know how important white hake is doesn't understand our fisheries. We were fortunate that we had people from Maine there at the U.S.-Canadian negotiations to indicate that white hake are extremely important to Maine, perhaps not to the rest of New England, but to Maine.

We think the Federal Government should coordinate the Observer Program, and it should not be put off to a university. We think that the Observer Program should be followed and that the proper number of observers should be on foreign national vessels as often as possible.

While the Act itself does not directly address the problems created by imported fisheries products on the domestic industry, this cannot be ignored, especially when such imports depress the prices of sea-food products. Clearly the revitalization of our domestic industry depends not only on the fish stocks themselves, but also on conditions in the marketplace, and too often such conditions are dictated by lower-priced imports, such as those from Canada, to the detriment of the domestic industry.

This, we believe, is a very important issue which must be addressed by the regional Councils and the Federal Government. An investigation of this problem and its impact is clearly justified. While we recognize that it has been suggested that the domestic industry can, under existing law, seek relief through countervailing duties, this route has in the past proved to be extremely difficult and generally ineffective.

Another issue of concern to Maine is the desirability or undesirability of foreign investment in the domestic industry. Should it turn out that such investment is chiefly for the purpose of making an "end run" around the provisions of the act, it may be necessary to develop further legislation to keep such actions on the part of foreign investors from getting out of control.

In any case, we believe that this issue is of such importance that it should receive continued thorough and detailed study.

Senator HATHAWAY. There is a bill in the House to provide 75-percent U.S. ownership.

Dr. ANTHONY. We think that foreign investment problems should be continued to be looked at.

Senator HATHAWAY. What would solve the problem?

Dr. ANTHONY. We don't know. It could be a problem and yet on the other hand, in some cases, it may be advantageous. I hope that this bill doesn't end thought on the problem for a while.

Finally, regarding the operations of the regional Council, we would like to make the following observations.

We have found that the time frame for the drafting and approval of management plans requiring over 300 days for each species before implementation, creates serious roadblocks for the councils, delaying even so-called interim plans unreasonably. It is our view that it is highly desirable for this process to be speeded up so that we do not find ourselves with management plans for fish stocks that, in the meantime, have practically ceased to exist. We think we could use the 300 days to get other types of management plans into action.

By the same token, it has become apparent that the present Federal guidelines under which the Councils must operate are very restrictive. While we certainly recognize the desirability of extensive public hearings on all issues affecting the industry, we believe that the Councils should also have more latitude in which to function in executive sessions. Progress has been difficult when every detail being considered is a subject, over and over again, of public debate.

We think this type of hearing we are having today is very important. It helps alleviate the communication problem that I mentioned earlier.

I guess that is all I have to say in view of the time.

Senator HATHAWAY. You mentioned the problem of imports and how the Council should have authority concerning this. I don't think there is anything in the act that would give the Council any authority as to imports. That is a matter for the Trade Act, I assume.

I assume you are advocating that we look into the question of competing imports.

Dr. ANTHONY. I think the fishermen will comment on that. I don't know of anybody that has a solution to this.

When the fishermen obtain a catch of cod or haddock, when fishing is good, price goes down, and this is due to imports from Canada. They seem helpless to solve the problem.

I don't know of any action today that is being implemented to correct the situation.

Senator HATHAWAY. I don't, either, but there is a provision in the law for countervailing duties if a foreign country is subsidizing their industry. There is a period of time, a year, before we can take action to try to get that foreign government to water down their subsidy of the industry.

Dr. ANTHONY. Some people tried this route a year or so ago. They were dismayed at the results, as I recall.

Senator HATHAWAY. I think it has to be done by petition. I don't know of a petition filed by the fishing industry to have the government move.

Dr. ANTHONY. Perhaps somebody else can talk to that.

Senator HATHAWAY. There may be, but I don't know of any.

Dr. ANTHONY. This came up a few weeks ago. Some people were dismayed and felt this was not an alternative they could use.

Senator HATHAWAY. Thank you very much, sir.

Let me at this time put in the record at the beginning a statement by Senator Muskie, who could not be here with us today. He is still recovering from his back operation, but he extends his best wishes and would like his statement made a part of the record.<sup>1</sup>

Also I would like to put in the statement from a book called "Tell It Goodbye, Kiddo" as to the decline of the New England offshore fishery. I will put in the last few pages of the book because I think it would be of interest to all of us.

The authors point out that we are such a meat-oriented society that if you laid all of the McDonald hamburgers end to end that have been sold so far they would go around the world 18 times at the Equator. That tells us something about our society, that we are a meat-oriented society. Any nutritionist would tell us we are going in the wrong direction by being such a meat-oriented society. We don't get the protein and other food values from the meat, pound for pound, that we can get from fish. As the authors point out, the New England fishing industry has been sort of a stepchild of the Government for many, many years.

<sup>1</sup> See p. 2.

Hopefully as a result of the Fisheries Conservation and Management Act, the 200-mile-limit bill, and as a result of these hearings and hearings that Senator Magnuson will hold in the spring that the fishing industry will no longer be such a stepchild.

[The article referred to follows:]



# **“Tell it Good-Bye, Kiddo”**

**The Decline of the New England  
Offshore Fishery**

**by David Boeri and James Gibson**

**International Marine Publishing Company  
Camden, Maine**

## Epilog

THE DECLINE OF THE NEW ENGLAND FISHING INDUSTRY CHRONICLES A POLICY of neglect and disregard that has characterized our government's involvement with the fisheries since World War II. Its interests traded off by diplomats and administrators alike, the industry today is wracked by overwhelming problems of finance, economics, labor, and resources. Although industry leaders have continually pressed for government assistance in alleviating the industry's troubles, there is little evidence that any comprehensive response is forthcoming.

Instead, many policy makers have come to look upon what meager government assistance does accrue to fishermen as simply another form of unemployment benefits to marginal workers. In fact, there is a growing number of policy makers who feel that it might just be easier and less expensive to write the New England fishing industry off altogether, and, in its place, make direct income payments to the displaced fishermen and their families through the welfare system.

The welfare notion belies an appalling lack of understanding of the basic nature of fishermen; for they are hard-working men who would live their lives no other way; they cherish the concept of individual enterprise, of fishing on their "own hook." It is hard to think of a greater indignity that could be perpetrated on the men and their communities than to take their living away from them and place the New England fishermen on welfare.

"We'll help them in spite of themselves" seems to be the prevailing attitude of the federal bureaucracy toward the fishermen. The Coast Guard, for example, recently received a mandate to establish mandatory safety standards for fishing vessels, but the tentative set of standards were so stringent that they might force as much as half the fleet to stop fishing. When informed of this, a Coast Guard official smugly replied that, if this were the case, then it would save federal agencies the time and effort of making up programs to manage scarce fish resources among all those fishermen. It was, he felt a sure means of eliminating inefficient fish harvesters. Thus are safety standards, presumably designed to save fishermen's lives at sea, promoted to retire older vessels and the men who operate them.

The "benign neglect" that the New England fishermen have been accorded, however, reflects an attitude that transcends government. There is a lack of concern by the country itself with the resource fishermen harvest. For first and foremost, America is a nation of meat-eaters, the home of the hamburger. At last count, we are reminded, McDonald's had sold enough hamburgers to encircle the world eighteen times if the burgers were placed side by side along the equator.

Yet it is becoming apparent that the predominance of meat and animal

products in the American diet is having profound effects upon our health, our income, and the world food crisis. Most Americans' diets display a persistent belief in the superiority of meat to other forms of protein. Perhaps for this reason, meat is associated with status as well as good health. Several years ago, for example, a newspaper survey revealed that the first commodity the majority of those questioned would buy if they had extra income was steak.

Research relating to heart disease and arteriosclerosis (hardening of the arteries) has in recent years uncovered the dangers posed by the large amount of cholesterol and saturated fats in our meat-oriented diets. An eminent Harvard nutritionist, Dr. Jean Mayer, notes that 80% of the calories contained in a hot dog or a hamburger originate from the fat content and not the protein content. Even the leanest steak, he reports, still produces more calories from the fat content than from the protein content. Despite the evidence, Americans continue to eat more meat than ever before, with alarming effects. When autopsies were performed on 18-year-olds killed in Vietnam, for example, the arteries in over 80% of the bodies examined were found to have been damaged by arteriosclerosis. To Mayer and others this damage is directly attributable to the overconsumption of meat and dairy products.

There are serious economic considerations, too, which can no longer be disregarded. At present price levels, for example, the nutritional yield from hamburger costs the consumer four times as much as the same yield from fish. If meat can be called a "quality" protein, it must also be called an expensive protein commodity, and for good reason.

Livestock feed on plants, of course, and in so doing, convert plant protein to animal protein. The conversion process, however, is not as efficient as might be hoped. To produce one pound of beef protein, for example, requires 21 pounds of plant protein.\* Such inefficiency results in the overwhelming percentage of our grain production, 80% in 1968, for example, being used to feed livestock.

One need not be surprised, then, at the high prices of meat in the marketplace. The consumer must pay the costs of agricultural production as well as the costs of raising, slaughtering, and delivering the cattle. And as fuel shortages, fertilizer shortages, foreign grain sales, and weather-induced crop failures (such as the one that affected the Midwest corn crop in 1974) raise the cost of grains, the price of meat can move in only one direction—upward.

\*Actually, livestock do not have to eat plant protein to produce protein, since micro-organisms in their stomachs act as protein-factories that can convert inedible, low quality plant material into high quality human food. But because Americans persist, in spite of the evidence, in feeding their livestock high quality plant protein that might otherwise be consumed by humans, the inefficiency of conversion continues to be a major allocation problem.

Beyond the matter of expense lies still another, and far graver, question. How is the American consumption of meat affecting the world diet? While more than half the world's people are suffering from malnutrition, Americans are using, just to produce livestock, four times as much grain as the average person in the world consumes in a year. Not only are we wasting valuable protein through its inefficient use to produce animal protein, we are also overconsuming. Scientists estimate that we eat upwards of 45% more protein than our bodies can use.

Is there an alternative to our expansive, wasteful, and health-impairing consumption of meat and related animal products? There is growing opinion that a greater consumption of fish is such an alternative.

Nutritionally, fish is a far better source of protein than meat. It contains no carbohydrates and practically no fat; it is the only real source of vitamin D aside from eggs, and it contains more calcium and much more fluorine and iodine than meat. Its substitution for meat in the American diet would considerably reduce the consumption of saturated fats and cholesterol, which are thought to contribute to coronary attacks and arteriosclerosis.

The harvesting and production of fish is also less costly than the production of meat. An interesting examination of the relative costs of production explains the ascendancy of the Soviet fishing fleet. When by the end of World War II, famine and war had eliminated the USSR's meat industry altogether, Soviet economists turned their attention to the prospect of harvesting protein from the seas. They discovered that production of fish protein would be far less costly and, just as importantly, more efficient than if they were to concentrate on producing animal protein on the land.

To produce 100,000 tons of beef and pork would require a capital investment of \$2,000,000, Soviet economists calculated. To produce the same amount of fish, however, would require 20 to 50% less capital. Continuing costs of producing fish protein after the initial capital investment proved to be a billion dollars less than producing meat protein, and, in terms of labor, fish protein, four million man hours less time to produce the equivalent of beef and pork protein. As a result the Soviet Union rapidly expanded their fishing industry in the 1950's, becoming a world fishing power whose people today consume about the same amount of protein as Americans.

Perhaps the most important consideration of substituting more fish for meat in our diets is that fish does not compete with man for food sources. Whereas Americans feed high quality plant protein, like wheat, corn, oats, barley, and soybeans to livestock to produce animal protein, they need feed nothing to the stocks of fish off their coastline. The greater consumption of fish and the lower consumption of meat would free substantial amounts of grains for Americans as well as the underfed millions. Fish are a self-renewing resource that require only proper management to insure that they

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perpetuate the harvest of high-quality, low-cost, non-competitive animal protein.

The issue of overfishing what might otherwise be an excellent, self-renewing food resource will eventually be resolved in one political forum or another. The United Nations Law of the Sea Conference convened in the summer of 1974 to decide a multitude of questions that involve ownership of the oceans' resources. Many of the developing countries demanded absolute jurisdiction over territorial seas extended to 200 miles. (Currently the internationally accepted territorial sea is a 3-mile limit with a 12-mile fishing limit.) Other nations such as the Soviet Union and the United States agreed to the concept of a 200-mile limit *only if* the coastal nations were granted preferential rather than exclusive rights; their concern is that the fishing fleets of other nations would not be allowed to fish in exclusive zones. The major powers also linked their acceptance of a 200-mile zone to guarantees by conference members that the passage of warships and merchant fleets through newly extended seas would be unimpeded.

The 1974 conference ended on what could at best be called a discouraging note. Its members could not even agree on issuing a final report or any other document that would do more than list the various alternative proposals before the conference. The public approach of the U.S. State Department following the meeting was to cite the "progress" that had been made and to express optimism about the outcome of the next conference. But fishing industry representatives and sources inside the State Department believe that no agreement will be arrived at or implemented before 1977, at the earliest. The optimism of official U.S. pronouncements about the Law of the Sea Conference has consequently drawn fire from the fishermen and their representatives. According to East Coast President of the National Federation of Fishermen, Jake Dykstra, the talk of "progress" is reminiscent of the General

. . . who with his troops backed to the edge of a cliff sends a  
communique to his headquarters, informing them that only 8000  
men instead of the previous day's 10,000 had fallen over the edge  
. . . and wasn't it great that his losses had been cut.

The failure of the Law of the Sea Conferences of 1974 and 1975 gave new impetus to the political efforts of American fishermen and many U.S. congressmen to secure a unilaterally declared 200-mile economic zone over which the United States would exercise jurisdiction. The bill, known as the Studds-Magnuson bill, gathered strong support in both houses of Congress

by late 1975, despite opposition by the Administration, and was passed by both houses in 1976. Though the legislation was designed only as an interim emergency measure until the U.N. conference arrives at some internationally agreeable position, Administration and State Department officials opposed it on the grounds that it would threaten the chances for a future treaty. Not so, responded supporters of the emergency legislation; the passing of the interim 200-mile bill gives United States negotiators a stronger position from which to work at the next Law of the Sea Conference. Negotiations cannot proceed profitably as long as they are merely diplomatic, supporters maintain.

To most industry observers the long delays in seeking protection of offshore fish resources nearly made negotiations of further treaties nothing more than diplomatic exercises: there might not have been any fish left, they claimed. Georges Bank has been overfished since 1965, according to a State Department memorandum of 1973, and in the last decade fishing effort has multiplied by seven times according to the National Marine Fisheries Service. In 1974, a team of ICNAF resource scientists estimated that the decline of all stocks of fish since the period 1963-1965 was 64%. And the figure, which "implies a significant degree of overfishing," may be on the conservative side, they add. Their evidence also suggests that even the officially agreed upon total allowable catch figures are far too high.

The stocks of fish will not return to their once healthy levels overnight, even if fishing efforts are sharply curtailed. Scientists have estimated that as many as 10, possibly 20 years (in the case of haddock) may be required before the stocks build up again. But in order to rebuild the overfishing must be stopped. The greater the delay in halting the destruction of stocks, the more time the stocks will require to rebuild. To many, the emergency passage of the Studds-Magnuson bill offered the only hope of saving the New England fishing fleet.

That hope notwithstanding, it is at best unclear whether 200-mile fishing zone in itself will be able to save the rapidly declining resources off New England's coast, let alone the domestic offshore ground fishery. Since the United States will have preferential rights and not exclusive ownership, the foreign distant water fleets would continue fishing on the same grounds on which they now operate. Without strict enforcement by an extensive (and expensive) fleet of Coast Guard planes and vessels, there is no guarantee that proper management controls will be exercised.

No one doubts that in the near future coastal nations will be granted more and more control over their offshore resources. Perhaps the stocks of fish off New England might be so well protected in the future that they will rebuild. Perhaps the United States may even decide to renovate and upgrade

its New England fishing fleet to the level where it might be able to supply a greater share of our demand for fish protein. Even as the coastal nations gain more control, however, it seems increasingly unlikely that the New England fisherman, as we now know him, will long remain on the scene.

While industry leaders and elected officials pressed the Administration for an extension of fisheries jurisdiction that would protect fish resources, the National Marine Fisheries Service had been pressing for an extension of its own jurisdiction that would provide it with management and regulatory authority over the entire fisheries picture. In 1973 the National Advisory Committee on Oceans and Atmosphere (NOCOA) recommended that the U.S. Department of Commerce (which oversees the National Oceanographic and Atmospheric Administration, NOAA, and NMFS) develop a national fisheries plan. A full-time staff from NMFS was assigned to the project, but the product of their work, The National Plan, was less a comprehensive plan than a piece of salesmanship designed to federalize the fisheries. The plan had many ideas for licensing vessels, levying poundage taxes, and removing "inefficiency," but nowhere could be found ideas or stated goals for financing gear research, creating incentives for vessel construction, or revitalizing the New England fisheries. Instead the plan seemed to mark the attempted transition of NMFS from a service-oriented research agency to a management/regulation agency.

The plan did little to change the General Accounting Office's criticism of the NMFS leveled in 1975 when it reported that:

Since 1963 the Service . . . has been slow in establishing comprehensive fishery development programs to assist the fishing industry to increase its catch . . . In addition the Service's organizational structure has not been conducive to carrying out an integrated approach to fishery development.

Inevitably, increased federal management controls, as proposed by the National Marine Fisheries Service, will transform fishing into a clearly defined, scientifically run operation. Fishing will incorporate modern agricultural methods, government bureaucrats will decide which fishermen are efficient and which inefficient, they will decide which should be licensed and which retired, and they will decide how their vessels should be deployed and how much fish they can catch. When that happens fishing will have changed from an occupation of hunters to an occupation of state-managed "farmers." Along with the end of the hunting enterprise must also come the end of today's New England fishing culture.

The fishermen are unquestionably intolerant of further government

intrusion. Bill Gordon of the NMFS's Gloucester office says that "fishermen look to government to prop them up." On the contrary, New England fishermen show every sign of wanting to be left alone. Billy Hallsen of the *Massachusetts* responds to Gordon's comment this way:

Who wants their help? Just tell them to leave us alone. Keep the foreign boats away and leave us alone. The industry will take care of itself.

The industry probably won't take care of itself despite the remarkable self-sufficiency of its fishermen. But Hallsen's comment is indicative of the tremendous misunderstanding that exists between the government and fishermen. On the one side there are well-educated, articulate administrators and researchers whose plans are smooth, rational, and eminently sensible *on paper*. They can justify their programs within the walls of the government, but they have no idea what fishermen are thinking or how they will receive their plans. On the other side are the fishermen, who want to be left alone.

On the most ordinary matters there arises conflict which must leave federal administrators incredulous and resentful. The National Marine Fisheries Service published a chart several years ago, for example, that lists both the Loran coordinates and the longitude and latitude of shipwrecks on the fishing grounds off New England. Quite unexpectedly, the charts, which were distributed free of charge to all the boats, evoked widespread bitterness among New England fishermen: they claimed the charts were providing foreign fleets with free information:

That's very obliging of them isn't it? Anyone who's ever fished out here knows where those wrecks are. So why tell the foreigners? Those assholes in government are helping the foreign boats.

The charge does not seem well-founded. It is hard to imagine, after all, that the Soviet fleet, or any other distant-water fleet for that matter, has not charted the fishing grounds during 15 years of intensive operations.

To the shocked administrators of the National Marine Fisheries Service, such vehement and irrational responses may have strengthened a sometime notion that fishermen are "savages." As one fisherman asserted about his comrades. "Hell, if I were in government I wouldn't want to do anything for these guys either: they're irascible as hell."

Tragically, the government agencies involved with the fisheries become only more insulated and entrenched. Although many of their proposals are



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well-intentioned and even promising, most of their work proceeds in a never-never land, a vacuum that exists outside any channels of communication with the fishing industry. The gulf only widens, and it widens because fishermen are so terribly ill-equipped at finding the government and articulating their causes.

In the end an insurmountable barrier between government and fishermen makes fishermen's acceptance of further management controls improbable. Ralph Norwood emphasizes the hardened attitude of the New England fishermen:

It is true that man is able to aid in the accelerated growth of some marine species, and that he may be able to develop new strains of seafoods, but man has not yet advanced far enough so far that Maine fishermen can be organized like auto workers and be directed here and there by government officials telling us where and how to fish.

[They] would have fishermen believe that they have the answers to our problems and if we fishermen put ourselves in their hands they will manage the fisheries and take care of us.

Perhaps in Norwood's comment lies the explanation for Danny Maher's advice aboard the *Sturgeon Bay*, when he told a young deckhand "Tell it good-bye, Kiddo."

Senator HATHAWAY. Is Bonnie Post here?

Would you like to testify now?

I understand you and Phil Merrill both have to get up to Augusta. I will take you out of turn.

Bonnie is house chairman of the Marine Resources Committee, married to a lobster fisherman.

**STATEMENT OF HON. BONNIE POST, STATE REPRESENTATIVE AND  
HOUSE CHAIRMAN, MAINE MARINE RESOURCES COMMITTEE**

Ms. Post. I'm Bonnie Post, Maine State Representative from Owl's Head. I'm House Chairman of the Joint Standing Committee on Marine Resources and both my family and that of my husband's have long been involved in various aspects of the Maine fishing industry. Today I am speaking for myself and Representative Lawrence Greenlaw, of Stonington, who was unable to attend.

The Maine fishermen held great expectations for the Fishery Conservation and Management Act of 1976. What was inevitable has taken place as they now see the implementation falling far short of their expectations. As a result many Maine fishermen are again disillusioned and skeptical of government's ability to meet the industry's need. One fisherman expressed the general feeling pretty well when he recently told a NMFS official: "We don't have time to keep an eye on you and we don't think you know enough to help us." The disillusionment and skepticism may result from a misunderstanding of the original law but the fact remains that it exists and has to be dealt with.

There are several components to the fisheries management system set up by the act and they need to be examined individually. Of primary importance, since they bear the responsibility for the development of the fisheries management plans, are the regional councils.

My first concern is with the nomination process for members of these councils. I'd like to make it very clear that I'm not criticizing individuals because I know Maine's members and know them to be extremely capable. However, it does concern me that of our three at-large members all are processors. We have no one specifically representing the Maine fisherman, the backbone of our industry. As the NE Council begins to consider the formation of a management plan for lobsters it has no member representing lobstermen. Furthermore, under the present system there is no way of insuring that when an individual such as a lobsterman does sit on the council, that his views are representative of other lobstermen. He may speak only for himself.

I do not suggest replacing the present system of nominations but rather adding to it to insure that various aspects of the fisheries industry are able to have an equal chance at representation. If the Department of Commerce were to recognize major fisheries organizations from each State and receive nominations from them, this purpose would be better served. In addition State legislatures might also be allowed to make nominations—thereby broadening the base of participation.

Presently the Department of Commerce makes the final selection of council members from among the nominees. As friction develops between the councils and the Department this may pose a problem, with

the Department wanting to choose less active or less forceful council members. I do not have an alternative selection process, but raise the issue for your consideration.

A similar issue exists with the advisory committees set up for each council in that by law members of these committees are chosen by the respective council. This type of system does not always make for a wide range of opinion or broad representation, and again the fisherman has little if any say in who is to represent him. Allowing fisheries organizations to have seats on the advisory committee would help alleviate this problem.

Another key component of the system is the Department of Commerce and here I have two major concerns. The first is that it seems that the Department has not yet reconciled itself to their role as outlined in the act. It's a role they evidently feel uncomfortable with and so seek to change. While the law itself was clear in this matter it seems that Congress needs to take some action to reaffirm its intent that the councils have the primary role in the formulation of fisheries management policy.

Second, it seems that the Department of Commerce is either totally insensitive to the needs of the fishing community or totally disorganized. I would choose to believe the latter since it can most easily be rectified. As an example as to what type of action has taken place over the last year one only has to look at the situation which developed with cod this last fall. When the directed fishery for cod was closed the council asked for an amendment to the by-catch regulations for that species. They and the fishermen waited for almost 8 weeks with no word about amended regulations. Suddenly council members received phone calls from the Department of Commerce saying that if they wanted to amend the cod by-catch regulations they had to do the same with yellowtail flounder and haddock and they had 2 hours to make their decision. An arbitrary—and I would say questionable—decision had been made by the Department in that all three species had to be amended. Council members were forced to make a sudden decision which would hurt some fishermen and help others without even the benefit of a meeting to discuss the impact and the alternatives. Following this conflict a meeting was held between the NE Council and the Department during which the Department said they would attempt to have better communications. Then a scant few weeks later another fiasco took place with the sudden closing of certain fisheries. I am sure you will hear more about this later.

At the very least it seems that the Department needs to set a higher priority on carrying out their responsibility as outlined in the act. Specific responsibility needs to be assigned and periodic checking needs to take place to see that the responsibility is carried out. We need to know where the buck stops. Fisheries are too important for this not to be a top priority for this administration. If they are unable or unwilling to do it on their own initiative then perhaps they need pressure from Congress to do so.

Perhaps, and I would say hopefully, the most important component of the system is the fishing industry itself. It was primarily for industry's and the public's benefit that the regional councils were set up and the councils need their input and support to succeed.

Unfortunately the uncertainty of the roles of the Department of Commerce and the regional councils undermine the confidence the fishermen have in the councils. The type of situations like those that occurred this fall don't have to happen many times before the fisherman decides that his trips to the meetings are a waste of time and he is better off fishing while he can. I will grant you that is a shortsighted attitude but it's one that's understandable under the circumstances.

Fishermen are also in a strategically poor position to participate in the process particularly if they are not on the council. Their major role so far has been to react to plans that have already been drawn up and a fisherman has little standing when he tells the council that according to his own experience the biologists have made incorrect estimates. While it would not completely solve this problem, I'd like to see additional statistical information developed at the State level and Federal money more available for us to do so. Tied to that money should be the requirement that the State work with the industry in setting priorities for its use, in carrying out the projects, and in analyzing the results.

Realistically, if you expect fishermen to attend frequent meetings they need compensation. It's easy to say that it's for our own good but families need to be fed and boat payments have to be met. Adjusting the advisory committee to the councils and paying them to attend all regular council meetings would help in this situation.

There is another concern that relates to the fishing industry that, uncomfortable as it may be, needs to be addressed. It's clear by now that management means quotas and when quotas are met fishing for that species either slows drastically or stops. There were a lot of people willing to take credit for passage of the 200-mile limit in 1976 but now no one wants to take responsibility for its impact. It had to be clear to anyone who had a working knowledge of the act as it developed that this problem would arise.

There will be no easy solutions. Preferably fishermen can be assisted in fishing for other species but we need better processing and marketing systems to utilize many of them. We still have to answer the question of what happens when, for whatever reason, a switch to another fishery is not possible. It's an issue which has to be addressed, and has to be addressed by Congress.

In discussing various components of the system I have not mentioned the State legislature and have done so because it seems as though there is no direct role for us. This seems unfortunate. In many cases we will be the ones who will be asked to change State statutes to conform to the council management plans or we will be the ones who will be called when unpopular steps are taken by the regional councils or the Department of Commerce. The Maine Legislature takes its role in setting fisheries policy as seriously as does the Congress, perhaps more so. We do not intend to surrender that role. As the implementation of the act is analyzed, I'd suggest you consider what role the State legislatures should play.

I'd like to address two areas in the interpretation of specifics in the act. The first has to do with optimum yield, a term which includes the consideration of national interest. In the past (such as with her-ring) the Federal Government has interpreted it to be in the national

interest to take into consideration the economic interests of foreign countries. Therefore, in determining the optimum yield in a fishery the Federal Government may take into consideration what the economic effects on a foreign country might be if it was not able to fish for that species. I would hope that this was not the intent of the act and that Congress take steps to tighten that section to provide better protection for our fishermen and our fish. The act also requires the determination of U.S. harvesting capacity. In the past the Federal Government has interpreted this rather narrowly by estimating that even though we had the physical capacity to harvest the optimum yield, economic factors would not allow us to do so. Determination of our harvesting capacity should be more economically biased toward U.S. fishermen especially in times of lowered quotas for other species.

Not surprisingly a greater financial commitment is necessary. In addition to what has already been mentioned the regional councils need more to carry on their work and the Coast Guard needs more to enforce the act. If we are to take advantage of the benefits of the act we need increased processing and marketing facilities. But to completely cover the needs of the fishing industry either with or without the Act would take more time than is available to me today.

I would simply ask that the act be modified in such a manner as to ensure meaningful participation in fisheries management by the industry itself. To paraphrase an earlier quote: "If we all know enough to help each other we won't have to worry as much about keeping an eye on each other and could put some of that energy toward solving our fisheries problem."

Senator HATHAWAY. Thank you very much.

Do you have any specifics with respect to State jurisdiction in areas where you think the State should have jurisdiction and not the Federal Government under the act?

Ms. Post. Being totally unobjective on that particular issue—

Senator HATHAWAY. I don't expect you to be objective.

Ms. Post. I guess the—I think the State should maintain its present jurisdiction over the 3-mile limit. What I see as problems are that we already in the Maine Legislature have been asked to give more power to the Department, saying that they need to be able to respond quickly to Regional Council regulations.

I think that size limitations on various species, if size limitations happen to be enacted by regulation which happen to be different from our size regulations, I'm sure there will be pressure on us to make the same kinds of changes. We may technically still retain control over that 3-mile limit, but the realities of the situation may make that technical control rather meaningless.

Senator HATHAWAY. Do you think the fishing industry in Maine will be prepared to testify in February with regard to the quotas for the rest of the year?

Ms. Post. I think probably by the time they get through testifying today that they will be prepared to testify.

Senator HATHAWAY. Thank you very much for coming here today and testifying. You have made excellent suggestions.

Ms. Post. Thank you.

Senator HATHAWAY. Senator Phil Merrill.

**STATEMENT OF HON. PHIL MERRILL, STATE SENATOR FROM THE  
TENTH DISTRICT OF MAINE**

Mr. MERRILL. Good afternoon. I appreciate being given the opportunity to come before this committee in order to present my views on the current problems with fishing and fisheries as they relate to Maine.

I will not read my statement but will make a few general remarks so the fishermen will have more of a chance to testify.

All of us are well aware of the human problems and hard feelings caused by the recent ban on ground fishing. Several articles in local newspapers pointed out individual reactions and some specific results of the ban.

Much of our economy is dependent upon the sea. Besides these men and women who go down to the sea, there are boat builders, fish processors, wholesalers. Older citizens who supplement retirement through making or mending nets or cutting or shelling fish. Young people who earn money working in restaurants along the waterfronts. The hardware store which sells parts for engines, and paint for hulls. These people work hard for a living and their right to work should not be taken lightly.

None of these people want to have ocean resources depleted and lost to all of us forever. It is in their best interests to see the fishing stock preserved.

Recent attempts to regulate the fishing industry were insensitive to people's interests and have been mismanaged. Almost no notice was given before the recent closure. Fishermen with years of experience were not consulted beforehand and in fact they didn't even know who was responsible for their plight.

Telling fishermen they cannot catch or sell fish is tantamount to shutting down the industry. On the 23d of December, Vinal Look was indisposed, no one knew anything and not even a creature was stirring or could be reached on the phone. I had to go to the waterfront and tell the fishermen I know that the people were unable to be reached and I could not find out what went into making that decision on closure. Would such a high-handed attitude have been employed if, instead of deciding that too many fish had been caught in one year, the Federal Government had decided that too many automobiles had been produced? When President Roosevelt closed the banks; it was done in times when almost the entire country agreed that some sort of drastic action was necessary and it is still remembered as a drastic step. In the present instance, we do not even have a consensus about what the quotas should be, or how necessary they are.

In actions such as the recent ban, the burden of proof should be, and must be, on the side of the regulator. It is the regulator which must withstand the criticism and be able to defend the actions taken. We must not make those who make their living from the sea assume the additional burden of proving that they should be allowed to continue to do so. Rather, those who seek these drastic changes should carry the ball. These decisions must involve consultation with the industry. They should take into consideration the experience of these men and women with the cycles of fishing, their knowledge of the migratory habits of fish.

I have specific proposals included in my statement that would be helpful in that regard. I would like to simply say that any procedure which attempts to close off an industry should have a notice period requirement longer than 12 or 24 hours and that before the decision is finalized the experts should present their data to the fishermen, give them time to put together their responsibility and then hold an additional hearing so they can bring their information to bear, and the regulators can consider the information that the people in the industry have to bring to bear on the subject.

Senator HATHAWAY. You're not advocating overfishing, but you think they should have the right to say that the quota put on them was not enough.

Mr. MERRILL. Due process, if it were provided to them, would give them a say which they did not have in the recent decision and I don't think they have in the development of recent quotas which were circulated on the waterfront last week, the quarterly quotas.

Senator HATHAWAY. There will be opportunity to testify on that in February, I understand.

Mr. MERRILL. I understand that.

Senator HATHAWAY. I appreciate your coming here and your interest in the fishing industry.

Thank you very.

[The statement follows:]

STATEMENT OF PHIL MERRILL, STATE SENATOR FROM MAINE

Good morning. I appreciate being given the opportunity to come before this committee in order to present my views on the current problems with fishing and fisheries as they relate to Maine.

All of us are well aware of the human problems and hard feelings caused by the recent ban on ground fishing. Several articles in local newspapers pointed out individual reactions and some specific results of the ban.

We in Maine have strong ties with the sea. Much of our economy is dependent upon the sea. A great number of people make their living directly from the sea. Besides these men and women who go down to the sea there are boat builders, fish processors, wholesalers. Older citizens who supplement retirement through making or mending nets or cutting or shelling fish. Young people who earn money working in restaurants along the waterfronts. The hardware store which sells parts for engines, and paint for hulls. These people work hard for a living and their right to work should not be taken lightly.

None of these people want to have ocean resources depleted and lost to all of us forever. It is in their best interests to see the fishing stock preserved.

Recent attempts to regulate the fishing industry were insensitive to peoples interests and have been mismanaged. Little notice has been given. Fishermen with years of experience were not consulted before hand and in fact they didn't even know who was responsible for their plight.

Telling fishermen that they can not catch or sell fish is tantamount to shutting down the industry. Would such a high handed attitude have been employed if, instead of deciding that too many fish had been caught in one year, the Federal Government had decided that too many automobiles had been produced? When president Roosevelt closed the banks, it was done in times when almost the entire country agreed that some sort of drastic action was necessary and it is still remembered as a drastic step. In the present instance, we do not even have a consensus about what the quotas should be, or how necessary they are.

In actions such as the recent ban, the burden of proof should be, and must be on the side of the regulator. It is the regulator which must withstand the criticism and be able to defend the actions taken. We must not make those who make their living from the sea assume the additional burden of proving that they should be allowed to continue to do so. Rather, those who seek these drastic changes should carry the ball. These decisions must involve consultation with the industry. They should take into consideration the experience of these men

and women with the cycles of fishing, their knowledge of the migratory habits of fish. The theory, combined with this practical knowledge will undoubtedly lead to better results.

Furthermore, pressure from our State Department should not result in Foreign fleets working our waters while our own fishermen are grounded by Federal regulations.

Rather than taking this committee's time any longer, I would like to insert into the record my outlining for a four point program which would meet the goals we all wished would be met with the passage of the 200 mile limit, and at the same time minimize the dislocations caused by the first phases of this conservation program.

I feel this program is the least that we should do to aid those who farm the oceans during the transition from an essentially non regulated industry to a regulated one. We have programs to assist agricultural industry. We make assistance loans available to individuals, businesses and communities when disaster strikes. We guarantee loans for new (and old) businesses. Yet with the fishing industry, the attitude appears to be regulate it, but do not provide any help in adjusting to the regulation.

This committee will hear from many people today, and will hear many suggestions about what to do with the quota system. I am confident that you will take these suggestions to heart, and bend every effort to make this program work, for all of us.

#### OUTLINE OF PROGRAM

Point One is a notice period. One of the most frequently heard complaints concerning the December fishing ban was the extremely short notice given to fishermen about it. It is one thing to set quotas and publish them so that all may know what the total allowable catch will be. But how can an individual fisherman relate his catch to this quota without knowing the catches of his competitors?

It is obvious that someone in the federal government is keeping track of the total catch in order to know when the quotas have been reached. This information on catch should be summarized and distributed so that the fishermen will be able to gauge their catch, and will know in advance if it will be necessary to impose a ban. Advance planning will alleviate much of the resentment recently felt and expressed.

Point Two is to structure the decision making process in such a way that the fishermen, processors and wholesalers have a real say in what the quotas should be.

A series of hearings could be held at which time the experts within the federal government would make their recommendations concerning quotas known. Perhaps one week or ten days later, a second series of hearings would be held, at which time those within the industry could reply. In this way the decision makers would have the benefit of both the scientific community and the people who actually make their living by fishing.

Point Three is assurances from the state department that foreign quotas are set in such a manner that we are not denying U. S. fishermen potential access to a full season. It would be a mockery if the 200 mile limit, passed in part to limit foreign fishing, ended up limiting our own people's access even more.

Point Four is positive action on the part of the Federal Government to insure that while we preserve the ocean resources we aid those who suffer from the dislocations this will cause.

Some of this action is embodied in the first three points. But there is more. Money should be made available in the form of lands or tax credits to enable the fishermen and processors to make changes in their equipment so that they are able to maximize their flexibility and not be dependent upon a single species.

A common problem with fishermen and processors is that with no catch there is no money coming in. Yet bills must still be paid. Loan repayments on boats, fishing gear and other equipment must still be made.

A fund which would guarantee those payments during such times as a ban becomes necessary should be available. If someone had to draw on these funds, the payback provisions should be liberal, and interest free, so that the first month back on the job, the businessman is not hit with double payments.

Senator HATHAWAY. Next we have Mr. Howard W. Nickerson, Executive Director, New England Fisheries Steering Committee.

We are glad to have you with us.



**STATEMENT OF HOWARD W. NICKERSON, EXECUTIVE DIRECTOR,  
NEW ENGLAND FISHERIES STEERING COMMITTEE, NEW BED-  
FORD, MASS.**

**Mr. NICKERSON.** I am Howard Nickerson, former commercial fisherman and executive director of the New England Fisheries Steering Committee whose membership numbers more than 45 organizations or businesses directly involved with the domestic commercial fishing industry here in New England.

The 200-mile legislation enacted by the Congress in 1976 and effective in March of 1977, I believe, is a challenge to those connected with the fisheries, whether they be fishermen, vessel owners, dealer/processors, or their representatives to improve their lot in life and at the same time to provide an abundant harvest from the sea of a quality wholesome product for the best interests of the consumer public as well.

I sincerely believe, however, it is too early to unjustly approve the benefits of the 200-mile legislation to either the fishing industry or the consumer public.

It is also too early to disapprove or find fault with the New England Regional Fishery Management Council and its decisions or actions to date.

The Council is doing the best job possible in my opinion in a very difficult set of circumstances at a very critical period of a limited fish supply in too many species.

For myself, I would have preferred to see the enactment of the 200-mile-limit legislation at least 5 years ago when there was a better stock abundance.

This would have made the decisions made in the past year, today, and in the future much easier to accept.

I also feel that if the law was not passed in 1976 when it was, there would have been no need for us to be here today because there would have been nothing worth talking about, as bad as it seems to be.

Because of the 200-mile limit as supported by the Senate Commerce Committee, and they supported the legislation a whole year before it was successfully accepted by the House of Representatives, I am optimistic about the future profitability of the domestic commercial fishing industry here in New England.

I feel strongly that if the opportunities of the 200-mile limit are properly utilized and we can get through this trying period that the State of Maine has to be the greatest recipient of the 200-mile limit; you have the fishermen/processors here.

I feel strongly that this is the State that has the most to gain in the future.

I wish I was a lot younger so that I could take part in it. Sure, the rules, regulations, and the quotas are and will be tough to live and work with, but what's the alternative if you want to remain in the fishing business. There is none.

1977 was not a good year for all fishermen and all species of seafood and shellfish, but it was a lot better year for a lot of fishermen and boat owners dollarwise than we ever hoped for in 1975 or 1976.

Some earned more money and caught more product in 1977 than before. The haddock catch increased by more than 100 percent, cod

over 40 percent, and sea scallops rose to a high over the last few years.

The optimism of the 200-mile limit created a surge to have new vessels built during the last 2 years and that is where the figures don't balance out as the fishermen present can tell you better than I can.

The increased dollar valuation of the species caught in 1977 is higher for the year 1977, as is the poundage landed in many ports over the year 1976 and in many ports and cases back to 1970, but let's look behind the figures and explain a few hard facts of life.

Approximately 40 new vessels entered the industry in the last 2 years, of which 30 went fishing in 1977. We will probably see at least another dozen this year.

Simply put, each new vessel is usually larger in length and fish-hold capacity than the one previously captained by the new owner; likewise, the horsepower is increased, so that larger nets can be towed.

A new method with the stern trawlers and winch hydraulics allows a net to be set and hauled much quicker than on the older boats.

So, we have new larger vessels with more horsepower, towing larger nets, which can be hauled quicker and easier in rougher weather. We have thus continually increased the unit effort and capability of our New England fleet.

However, we are spending more time per vessel involved in the fisheries to catch less fish. We are also expending more dollars in capital investment and operating costs to catch less fish per unit on an annual basis.

There is another and perhaps more important tragedy, however, and that is because of the increased capabilities of the fleet on many days in 1977, the supply dockside exceeded the consumer demand which resulted in wide fluctuations of prices paid to the fisherman, on the downside, of course.

Unfortunately, the consumer public rarely gets the advantage of these depressed prices in the retail outlet or in the seafood restaurants where a large part of the New England catch ends up because of its high quality.

I have some statistics for prices and landings by species that I will not present at this time but will include in the written testimony.

In summation, I would like to reiterate that it is much too soon to attempt to evaluate the record of either the 200-mile-limit legislation or the New England Regional Fishery Management Council.

I would, however, request and strongly support continuing fishing industry input, meeting attendance, and appreciation for what the Council is attempting to do that can only benefit the commercial fishing industry and those that toil so hard within it.

I am deeply appreciative of Senators Durkin's and Hathaway's efforts, those of the Senate Commerce Committee and their fellow Members of Congress who through the enacted 200-mile-limit legislation chased most of the foreign vessels away from our fish and our New England shores.

Senator HATHAWAY. Mr. Nickerson, are you advocating some limited entry scheme or a payoff for boats that are taken out of the fishing industry as Spencer Apollonio testified that the Common Market countries are doing?

Mr. NICKERSON. I hate to advocate limited entry. I would have advocated some of our fishermen wait for their new vessels for a couple of years. I believe that the fishermen will have to catch other species, but arrangements have to be made to make it profitable for him.

The biggest problem today and the most neglected situation today that is only going to help the fishermen, there is little consumer education and marketing promotion of the product.

Everybody is losing sight of the fact that you have to have a consumer before a fisherman has something to sell.

In this country we spend millions of dollars in the Department of Agriculture for consumer education. We spend less than peanuts and even those are subsidized in this country as to fish.

I think you will see limited entry, yes, sir, but I do not advocate it.

Everyone is losing sight of the consumer is the biggest problem and no one is doing anything about it.

Senator HATHAWAY. I agree with you. If the consumer doesn't know the advantage of eating fish, that hurts the market. We should do what they have done in the Department of Agriculture.

Most of the programs are an assessment by the Department of the industry itself for promotional activities. The potato industry in the State of Maine is the beneficiary of the Department picking up these administrative costs, and perhaps we should do the same for fishing.

Thank you very much, Mr. Nickerson.

[The following information was subsequently received for the record:]

#### SOME NEW ENGLAND FISHERIES STATISTICS—1977

Haddock catches increased over 100 percent. Cod catches increased over 40 percent.

Total landings of varied species (at selected ports were more than 355 million pounds valued in excess of \$93.9 million.

1976 statistics were 348.8 million pounds worth \$83.9 million.

1977 statistics, January–November were Cod, 56.1 million pounds worth \$12.7 million.

1976 Cod—39.6 million pounds worth \$10.6 million.

1977 Haddock—23.6 million pounds worth \$7.6 million.

1976 Haddock—10.6 million pounds worth \$4.6 million.

750 Deep sea vessels—30,000 fishermen off New England shores.

430 boats and 8,100 fishermen in Massachusetts.

236 processing plants in New England.

Pt. Judith Fishermen's Co-Operative—70 boats, landings down slightly.

#### NEWPORT, RHODE ISLAND LOBSTER LANDINGS

1.7 million pounds were landed, about the same as 1976.

\$3.3 million was the wholesale value of the catches.

Fleet expanded with 10 new boats to 34 boats.

22,000 deep sea traps set; up over 14,500 traps in 1976.

1977 offshore fishing increased 50 percent; landings the same as 1976.

Total lobster catch of Rhode Island in 1977 dropped a little from 1976, from 3.3 million pounds to 2.9 million pounds in 1977.

Wholesale value statewide down from \$6.2 million to \$6 million in 1977.

#### FINFISH LANDINGS AT NEWPORT, RHODE ISLAND

1976—22.6 million pounds.

1977—19.5 million pounds—13 percent drop.

1976—\$6.8 million.

1977—\$6.2 million.

## SHELLFISH IN NEWPORT, RHODE ISLAND

1976—2.7 million pounds.

1977—2.2 million pounds; an 18 percent drop that was offset by a rise in value, however.

1976—\$4 million.

1977—\$4.1 million.

## NEW BEDFORD, MASSACHUSETTS

1977—\$43,154,000 worth of seafood; \$3.8 million increase over 1976—\$39,342,000.

1977—75,533,000 pounds of fish; increase of 9,897,000 pounds.

1976—65,646,000 pounds of fish.

1977—\$20,853,000—(12,453,000 pounds) was landed.

1976—\$17,523,000 (9,526,000 pounds) scallops were landed.

1977 New Bedford scallopers accounted for about 48 percent of the 1977 landing valuations.

1977 second place was yellowtail flounder with a value of \$9,063,000 for 19,023,000 pounds.

1976 yellowtail flounder produced \$9,145,000 and 21,686,000 pounds.

There was a change, however, in 1977. Codfish and haddock contributed most heavily to New Bedford's overall poundage increase in 1977.

Codfish landings rose to 18,587,000 pounds, with a value of \$4,169,000 in 1977, compared to 13,812,000 pounds and \$3,855,000 value recorded in 1976.

Haddock landings were \$2,092,000 and 7,355,000 pounds in 1977 and in 1976 were valued only at \$965,000 and 2,580,000 pounds in 1976.

Senator HATHAWAY. Captain Peter Kelly, president, Maine Fishermen's Association.

You seem to have a few friends here.

**STATEMENT OF PETER W. KELLY, PRESIDENT, MAINE FISHERMEN'S COOPERATIVE ASSOCIATION; ACCOMPANIED BY STANLEY BAYLEY, VICE PRESIDENT; LORENZO L. SCOLA, TREASURER; BOBBY DAYTROW, SECRETARY; AND CLARK NEILY, DIRECTOR OF ECONOMIC DEVELOPMENT, PORTLAND, MAINE**

Captain KELLY. I would like to introduce those who are assisting me here today.

The first man I would like to introduce is Stanley Bayley. He is vice president of the Maine Fishermen's Cooperative Association.

Bobby Daytrow, secretary; Larry Scola, treasurer; Clark M. Neily, director of Economic Development for the City of Portland and staff coordinator of the Fish Task Force here in Portland.

Because of Mr. Neily's familiarity with the problems of our Maine fishermen, we have asked him to assist us in coordinating our efforts until we can hire a permanent executive director.

Senator Hathaway, my name is Peter W. Kelly. I reside at 40 Warren Avenue, Cape Elizabeth, Maine. I am a fisherman, operating my own vessels out of Portland. I operate a gillnetter, a dragger, and a lobster boat. I am also involved in operating a retail fish market, and on occasion I have also acted as a distributor and transporter of fish catches for other fishermen.

I appear before you today not only on my own behalf, but primarily as president of the Maine Fishermen's Cooperative Association composed of over 180 members—when I wrote this statement it was 180 members, but we have over 200 members at the present time who are

almost entirely active in the fishing industry on the coast of Maine. Most of our members own or operate their own fishing vessels out of various Maine ports.

I would like to begin our statement at this hearing by most emphatically declaring that our members totally endorse the principle of fishery management with the objective of restoring various species of commercial fish which have become depleted from overfishing, within the 200-mile fish conservation limit as established by the U.S. Congress. It is obviously our hope and belief that wise fish management practices will result in greatly expanded opportunities for earning a living through fishing off the New England coast and, in our case, more particularly off the coast of Maine.

We also recognize that an expanded fishing industry off the New England coast, one of the five major fishing areas of the world, will result in giving the economy of New England a substantial boost, not only through the industry afloat, but also through all the service industry ashore which includes everything from fish processing to the provision of supplies and equipment for fishermen. Obviously, an expanded fishing industry will provide very important additional opportunities for full-time employment in New England. We are also most aware and deeply appreciative of research now being carried out to develop new marketing opportunities for New England fish catches, both in domestic markets and foreign markets.

We wish, however, to express to this committee, and through you to Congress, that we have some very serious reservations about the manner in which the present fisheries management program is being administered.

At this time, we wish to emphasize that any fish conservation program designed to achieve replenishment of certain species which appear at this time to be depleted, must be carried out in a manner that will allow the fishermen of New England to survive. New England's fishermen must be allowed to continue to make a living during this most difficult interim period when fishing operations are being rigidly controlled for conservation purposes by the Federal Government.

One of our major concerns in this regard is that in the operation of the Fisheries Management Act as it relates to the New England area, it is our observation that the recommendations of the New England Fisheries Management Council often do not seem to be headed by the National Marine Fisheries Division of the Department of Commerce in Washington. There are often sudden and arbitrary rulings or ultimatums issued by the National Marine Fisheries officials in Washington with either little or no prior consultation with the aforementioned council. At various public hearings which we have attended during the past year in Peabody, Mass., we have been astonished that members of the council themselves have felt constrained to complain angrily that their recommendations have been either substantially modified or ignored. We feel most strongly that this is not proper or appropriate.

The New England Fisheries Management Council was created to represent the fishing industry and the New England people as a whole in formulating optimum yields. This council should be and must be a sounding board for comments from the fishermen themselves. It is at

present the only device by which the positions of our various fishermen are relayed to the administrators of the Fisheries Management Act.

If this council's advice and suggestions to the National Marine Fisheries Administration are ignored, the last industrywide communication with the top administrators of this act in Washington is destroyed.

This brings us directly to the second point that we would like to make, namely, that the National Marine Fisheries Service, in the upper levels of authority, both in New England and in Washington, is not, in our opinion, administering the program of the Fisheries Management Act in a manner which we feel Congress wants them to operate.

We feel there is a distinct lack of understanding of the problems which fishermen have, and will continue to have, in complying with conditions and regulations administered in the name of this congressional act.

For instance, an order dated December 20, 1977, prohibited fishing for cod, haddock, and yellowtail flounder as of midnight December 23, 1977, for the balance of the calendar year.

This order, at first, "prohibited trawl, line trawl, and gill-net fishing, whether directed toward these species or capable of taking them incidentally." This order was subsequently corrected, and then, subsequent to that, the correction was corrected.

In the resultant confusion, many of our fishermen were totally confused or perplexed as to what they could or could not do during the period, to say the least. Many were probably either in violation of the order, or conversely, refrained from doing anything with a resultant loss of fish already netted or of equipment left untended.

It seems hardly fair that immediately after our fisheries are closed on haddock, cod, and other species, that a flood of Canadian fish descends upon our American markets from a foreign fishing industry with much greater freedom and much larger quotas.

We furthermore feel that the research done for the purpose of verifying the numbers of different species of fish to substantiate quotas for same was carried out in a most incomplete and questionable fashion. We specifically suggest that far more weight be given to the actual catches as logged by fishermen of various species in the two major fisheries management zones off New England. These catches give a far better clue to the abundance, or lack thereof, of various species of commercial fish. For instance, from our own observation, cod, which is strictly controlled by quota, is far more abundant, comparatively speaking, than whiting which is not controlled.

Speaking of the two major fisheries management zones off New England, namely 5-Y and 5-Z, we feel that a new separate zone should be created encompassing the actual geographic Gulf of Maine. In the first place, the type and quantity of species caught are generally different than those in most areas of the two zones mentioned. Second, the fishing conditions, especially the bottom conditions, are different and require different approaches.

We are troubled with the administration of the observer program. We have been told that there is a freeze which precludes expanding Federal employment. We respect such a freeze as most commendable

in cutting costs of government, but we believe that the millions of dollars of fees and fines collected from foreign vessels might well be set aside as dedicated revenue to underwrite the cost of a more effective observer program. Incidentally, there are now 15 observers on the east coast and 88 on the west coast. We would also suggest that these same funds, if dedicated, might well be used to improve the research program which would, in our opinion, result in more realistic quotas being assigned.

We are also disturbed at regulations concerning discards, recognizing that such discards always die and therefore are wasted in a world, many parts of which have food shortages. It seems to us that a better system must be developed rather than discarding edible fish which are accidentally caught and are part of the by-catch which characterizes most fishing operations.

In this regard, we feel that more recently there has been a more stringent monitoring of domestic fishing vessels than has been applied to foreign fishing vessels. Frequent boardings can tie up a fishing vessel for a number of precious hours at sea. We might add that in addition to the inspection of fish catches, that the Coast Guard also inspects various equipment dealing with vessel safety at the same time. We suggest that safety equipment inspections be reserved for periods when the vessel is tied up ashore and not at sea.

Finally, on this same subject, we feel that the size of specific fines for violations by our New England fishermen is excessive and unreasonably punitive. It is almost impossible to fish for a number of the permitted species without occasionally catching some that are not permitted. This leads to most difficult situations as far as the accidental catching of prohibited species in our by-catch.

We feel that while this program is being molded or shaped, that there will have to be many changes and modifications to make it an effective program. During these initial years, there has to be some reasonableness applied to the aforementioned situations while both the fishermen and those charged with administering the Fisheries Management Act learn to live with it. Many actions taken today are unnecessarily harsh and disastrously punitive.

We are distressed with the quotas assigned for cod and haddock for the four quarters of 1978. The fishermen of the State of Maine generally operate with smaller boats than the fishermen from States to the south of us. This means that they cannot go as far from shore as the larger vessel which often operate over 50 miles from shore on the outer banks. The danger is that the assigned quotas for each quarter are often used up by the larger vessels before our Maine fishermen can really get a "significant piece of the action." These same larger vessels are now in the process of recruiting double crews so that such vessels may be used almost constantly to get a major share of the quota. We therefore would like to have quotas reviewed with this handicap for Maine fishermen given some consideration. It may well be that the Maritime fisheries administrators should carefully consider assigning maximum quantities to specific fishing vessels. This would result in a fair distribution of the quota among the licensed fishing vessels.

Finally, as is most frequently the case, we believe that a great many of our problems are the result of a communications failure between the top fisheries management officials in both New England and Washington and the fishermen themselves.

We suggest that it might be wise to have at least one bona fide fisherman from each State appointed to the Fisheries Management Council. While we have great faith in the fine members already appointed to this council, we feel that there should be more direct representation of fishermen. We also feel that the recommendations of this council should be binding on the administrative officials of the National Marine Fisheries Service except in cases of extreme or unusual emergency, during which time emergency directives would be enforced only until the next meeting of the Management Council, where the problem may be appropriately dealt with.

As a tragic consequence of the heavy-handed ineptness of the officials charged with the administration of the fisheries management program, the fishermen are rapidly moving toward an adversary relationship with these officials rather than a cooperative relationship. Unfortunately, the Coast Guard is being drawn into this adversary relationship, when historically the fishermen have looked upon this branch of government as its protector and friend.

We respectfully remind our good Senators that the objectives of a restored and revitalized fishing industry are the same for all of us, but these objectives cannot be achieved except in an atmosphere of mutual trust and cooperation. An atmosphere, we might add, that does not exist between the bureaucratic administrators of the program and the fishermen—at least at this time.

We therefore request you gentlemen from our U.S. Senate to initiate whatever action you may deem appropriate to help New England's fishermen during this troublesome period.

We need such action and we need it now. We are troubled that often action by Members of the U.S. Congress takes many months to accomplish the desired results. We cannot wait for a number of months, or even a number of weeks to elapse without some appropriate treatment of our concerns.

We thank you for your consideration of them.

Senator HATHAWAY. Thank you very much, Captain. That was an excellent statement. You made a lot of good recommendations.

With respect to the observers, the budget problem is that if we hire people through civil service we have to keep them on forever. But the Office of Management and Budget is considering hiring them on the contract basis and then when they are no longer needed, discharge them and it would not require as much money and that's the direction we will take to increase the number of observers when we need them.

When the act is in effect for a number of years, we won't need as many observers and the various countries involved will obey the law without too much policing activity.

In your statement you mention the discards. And you say that there seems to be a better system. Do you have anything in mind?

Captain KELLY. On the better system of discards?

Senator HATHAWAY. You say rather than discarding edible fish which are caught, there may be a better system.

Captain KELLY. We're talking about the closure when we had to throw them overboard. We threw haddock and codfish and a very few yellowtail flounder over.

Senator HATHAWAY. You mean keep them?



Captain KELLY. Yes; we have men sitting here today who threw 400-700-, 800 pounds of haddock away in 1 day. That's ridiculous.

The prices in Boston reached an all-time high, \$1.80 for codfish 1 day when we were closed. And we couldn't bring codfish to store. Tommy Nardman was sent home because it was said if you catch one codfish or haddock you will have to pay a fine that you can't afford to pay.

Senator HATHAWAY. The ones you throw away are dead.

Captain KELLY. Yes; the seagulls eat them.

Senator HATHAWAY. If we said the fishermen could keep them, then it would open the door for them to fish for them and they could say they accidentally got in the net.

Captain KELLY. Mr. Colleson had a fine against him. He had 1,400 flyfish and 200 haddock and he has a violation against him.

Senator HATHAWAY. That seems ridiculous, that small an amount. Perhaps they can get a percentage that would be reasonable under the circumstances for them to keep.

Captain KELLY. We need management and I said this and we want it. We know we need it. We will be ahead in the future.

Senator HATHAWAY. What would you think of a program for the fishing industry that was comparable to the agricultural subsidy program that is now in existence where we pay farmers not to grow certain crops? Do you think we should do the same for the fishing industry, pay them so that we can maintain that species and at the same time allow the fisherman to get some income while he is not fishing that particular species? Some experts have said it will take 10 to 20 years to replenish the stock of some of the species we have, and that's a long period of time.

Captain KELLY. If I can point out we are catching more haddock and codfish now than we have in years. When a fishery reached its quota in June for codfish we never hardly got the codfish up here until late this year and we caught large codfish. I feel and I know I started when I got out of school 14 years ago, I was one of the first gill-netters here in Portland, one of the younger fellows that came into the business. If we caught 500 pounds of haddock one time once a year, we thought we were doing great. Now we have large fisheries of haddock now.

I think the closure on browns during the year has brought the haddock back. They talk about year classes. We can buy that we have a lot of scrod around, but in a couple of years they are going to grow. The shortage of haddock, you can speak to any fishermen or look at the National Marine Fisheries report and you will see that we have caught a lot more haddock and cod than we have in the years before.

When I came first into the gill-net fishing, the gill-netters had to go out of business because they couldn't catch codfish. I came into it at the right time. There was a great abundance of codfish in the 1960's: 1964-65. We believe it's a cycle. We want to make sure that—what we feel is if the scientists are right, maybe we will be better off. But I don't know what more we can say on that subject.

Senator HATHAWAY. You don't think you need a subsidy program?

Captain KELLY. Personally, I don't want to see it. Maybe some of the fishermen here want to see it. I just like to go out and work hard and make a living. If we can cut off some of the foreign fishing coming in we could live with smaller quotas and get a better price for our fish. And in the City of Portland here now we are working on this new fish

pier task force. If we can set up fish processing here in the City of Portland and have facilities, I think that we would save a lot of money; like shipping our fish to Boston costs a lot of money for transport and boxes.

So if we can set something up here in Maine and in other parts of Maine, I think we will be all set. That's my feeling.

Senator HATHAWAY. Thank you, Captain. Any other comments?

Mr. SCOLA. I would like to say during the closure of the haddock and cod season—my fishing vessel was—

I'm Lorenzo Scola and I'm owner of the fishing vessel *Dorothy and Betty*. After the closure my son took the vessel out and he was fishing for hake and dabs. He was boarded with 200 pounds of haddock and cod. These fish are brought up from 100 fathom of water to the surface. When you bring them up from 100 fathom of water to the surface, the fish die immediately. It's foolish to throw them overboard. They came aboard with guns and everything else.

I don't think the law was meant to do this to fishermen. But if they have a closure on haddock and cod again, the fishermen in Maine would like to fish for other species like hake and dab and shrimp. But if we get an incidental catch of haddock and cod, I don't see why they want to put me in jail.

Senator HATHAWAY. Good point. Thank you.

Mr. BAYLEY. Senator Hathaway, I am Stan Bayley and I reside at Old Millbrook Road in Scarborough. I operate my own fishing vessel out of Portland. It is a 76-foot dragger.

I would like, at this time, to comment on a meeting which is being held in Washington tomorrow with Secretary Kreps. It is our understanding that this meeting is being held to meet with representatives of the New England fishing industry and discuss their problems.

We understand that five representatives from Gloucester and New Bedford have been invited.

We would like to advise this Committee that no fishermen from the State of Maine or from the Main Fishermen's Cooperative Association have been invited to attend this important meeting.

It is also difficult for me to understand why the active fishermen advisors to the ground fish committee of the New England Fisheries Management Council have not been invited to a meeting like this.

In our opinion, this omission or slight of the Maine fishermen and Main active fishing industry is typical of the kind of communication failure that comes from the top levels of administration, both directly of the fisheries management program and the Department of Commerce for their failure to appropriately include all who should be considered from New England.

Senator HATHAWAY. Thank you very much.

The next witness is Mr. R. K. Dearborn, Assistant Director of Sea Grant, University of Maine, Orono.

#### **STATEMENT OF R. K. DEARBORN, ASSISTANT DIRECTOR OF SEA GRANT, UNIVERSITY OF MAINE, ORONO, MAINE**

Mr. DEARBORN. Senator, I am Ron Dearborn from the University of Maine and I am representing both the University of Main Sea Grant and also the University of New Hampshire Sea Grant program.

We have a cooperative institution. I would like to request that my written comments be included in the record.

Senator HATHAWAY. Your entire statement will be placed in the record.

Mr. DEARBORN. I apologize for any discontinuity in my spoken comments as I have abbreviated my notes.

The Fishery Conservation and Management Act of 1976 has changed two major and related aspects of fishing in Maine. First, it has very significantly altered the business climate for all fishing-related businesses. In some cases the alteration to the business climate is clear. In other cases the character and direction of these changes is not clear. Second, the act has created a new governmental structure, the Regional Fishery Management Councils. More than being just a new governmental unit, the formation of the Councils signal an attempt to manage a limited common property resource, the fishery, in a democratic rather than in a technocratic manner. As such, this represents a new type of management of a natural resource. This has required a shakedown and a new definition of roles for all fishery related governmental bodies. My written comments are a discussion of these two interrelated matters, the business climate and the new type of management unit.

Nonetheless, it is important to point out that Government-caused disruptions such as have occurred during the first year since implementation of the Fisheries Conservation and Management Act have a pronounced effect on business climate. Low quotas, restrictive by-catch allowances, and the closure of the ground-fishery have been confusing, unexpectedly stringent, and in some cases have been a real hardship. This is true particularly for fishermen who have invested in new boats and for processors who have invested in new equipment. Recouping these investments, which have been made without the Government money which so many people have been promised, has been made more difficult.

What is also important for the fishing industry of Maine is that each one of these management regulations limits the fishing businessman's versatility. Versatility has been what has kept this State's fishing industry in business through the lean years when the fish stocks were so low. A fisherman's business success depends on his almost daily assessment of whether he is fishing the right species, whether he is catching enough, and whether the price is adequate. If not, he must change gear and technique to meet his investment and operating costs. Closed seasons, quotas, closed areas, limit the scope of alternatives available to him, and therefore limit his chances of making money.

Similarly, dealers and processors are affected. Seasons and quotas affect the flow of fish to the market. Because fish is perishable, uneven supply is expensive for a processor because he must invest in much larger capacity to handle the peaks. This investment may lie idle during an off-season. New opportunities lie in the expanding world markets for fish which were previously caught by foreign fleets of our shores. This requires new processing procedures for species new to our domestic industry. Because we are already fishing traditional species to capacity, shoreside development to serve these new markets is a prerequisite for any increased fishing effort. This will require large scale investment which is not likely to take place in a climate

of uncertainty. Herring may be used as an example. Stinson Canning Company has invested heavily in the adult herring business. Last year, National Marine Fisheries Service decided to give foreign nations an allocation of herring on Georges Bank on the grounds that only a few U.S. boats had the capacity to fish for herring that far offshore and that it would not be profitable even for those. The fact is that once a company has made a sizable investment, they may be willing to fish at a lower profit rate in order to keep the overall business operating. The possibility of Government actions such as this clearly inhibit the large scale investment that is needed for shoreside support of the growing industry.

The upshot of this is that the 200-mile limit, while providing the promise of a good future, something which was impossible before the limit, has produced a business climate that can only be characterized by almost crippling uncertainty. No prudent businessman, looking for a place to invest, would risk his capital in an industry subject to capricious, unpredictable disruption by Government.

Aside from the effect on business climate there are three other governmental actions which are affecting the ability of the fishing industry to make money. They are our tariff structure, our reluctance to offset Canadian supports for fish marketed in Maine and New England, and the international boundary negotiation with Canada now underway as a result of both nations having extended their jurisdiction to 200 miles. My written comments refer extensively to these three things and I ask that you refer there for further comment.

I would like to move now away from a discussion of Government's effect in business climate, to a discussion of the new management structure, though the two are clearly related.

Given adequate assistance, the regulatory structure established by the Fisheries Conservation and Management Act need not make capricious, unreasonable regulations. Clearly, that is no one's desire. Few people who have been involved during the last year feel encouraged by the confusion and resulting regulation that has actually taken place. However, the structure for making management decisions under the FCMA is a good one. It is the first time that fisheries rules have been made in a democratic rather than a technocratic way. The act encourages participation by everyone involved: fishermen, dealers and processors, scientists, managers and more. No longer is the industry relegated to advisory and reactive roles. Their participation in the actual drafting of regulations is required.

This is putting new demands on everyone. It is therefore no surprise that there has been misunderstanding and confusion from all sides. What we suggest is that this is not a situation to blame on anyone; it is a function of this new democratic process; and it will require active assistance from Congress if the process is to work as they intended.

As the fishing industry needs assistance, for instance, in terms of shore facility construction, the government structure also needs assistance. That assistance is needed primarily for development of increased information, for increased communication, and for increased liaison. The difficulties of making management decisions democratically in a group as diverse as the one embodied in the Council and the public which regularly participate in their meetings should not

be underestimated. Homogeneous groups make decisions more easily than heterogeneous ones. The fisheries community is an extremely heterogeneous one and therefore, the more information that is shared among them, the more easily they will understand each other and make decisions together. This is where liaison, translation, and communication become of paramount importance.

First, more information is needed. More species are being managed than ever before, and the management is being more finely tuned than the simpler yearly quotas which were imposed under ICNAF (International Commission on Northwest Atlantic Fisheries). This means we need even more biological information than was needed before.

In difficult situations such as this it would be nice to compare several opinions. The Fishery Council is attempting to do just that. Because the National Marine Fisheries Center has a limited budget the Council has approached Universities asking them to channel their expertise into areas which will later help the Council. Given the prominence of fisheries in this State, the University of Maine has begun analyzing its capabilities for meeting those needs. Universities bring a special element to research, that of rigorous peer review. The practice of publishing research results in referred journals ensures that scientists throw their ideas and conclusions open to criticism. The resulting competition provides a unique method of quality control, and for the spawning of new ideas.

The Universities of Maine and New Hampshire have made the hard decision to preferentially move money into the marine area. Their budgets, as with other Universities, are severely taxed. The research budgets for the National Marine Fisheries Service and for the state management agencies are also taxed. Much is not known about the complicated ecosystem of the Gulf of Maine and of Georges Bank. Increased knowledge will be critical to Fisheries Council and subsequently to the fishing industry. We encourage the Congress to provide the developing councils with this needed information.

Because the Fisheries Conservation and Management Act requires that management of the fishery be accomplished in a way that preserves the economic and social health of the industry while protecting the fish stocks as well, accurate and adequate information concerning fishermen and fishing businesses is as necessary to the Council as is biological information. Earlier I touched on some of the complexities of preserving the economic health of the fishing industry.

Thus if the hard biological facts point to a need for substantial recovery of a particular fish stock, the hard economic facts may dictate that the recovery process move ahead slowly because fishermen's livelihood depends on their ability to catch fish. The Management Councils will often find themselves trying to determine a very fine line which will meet both needs.

Without adequate information, without good communication and liaison among all participants, the process of managing the fishery democratically will continue to be a series of unproductive showdowns. But I sense that most of the elements and people involved in this new process, and they are many, want the process to work. With the continued support of Congress it can.

Thank you, Senator.

Senator HATHAWAY. Thank you very much for your testimony.

You might be interested to know that the Commerce Committee is planning extensive oversight hearings on the industry problems, and particularly the investment climate that you talk about, in May of this year and I will see that this statement of yours is inserted in the record of these hearings.

I support you wholeheartedly and will try to get more research money because that is a shortcoming not only in the fishing industry but in many others as well.

But for political reasons more than any others, research money is extremely difficult to come by.

Thank you very much.

[The statement follows:]

STATEMENT OF R. K. DEARBORN, ASSISTANT DIRECTOR, UNIVERSITY OF MAINE SEA GRANT PROGRAM, AND DIRECTOR, MAINE SEA GRANT MARINE ADVISORY SERVICE

Senator Hathaway, Senator Durkin, I carry to you the regards of Dr. Frederick Hutchinson, the Vice President for Research and Public Service at the University of Maine at Orono and Director of the Sea Grant Program, and from Dr. Robert Corell, Director of the Marine Program and of the Sea Grant Program at the University of New Hampshire. As you may know, the Universities of Maine and New Hampshire are partners as a Cooperative Sea Grant Institution. Scheduling conflicts prevent Drs. Hutchinson and Corell from being here today. I would also like to bring to your attention the presence of Ms. Robin Peters, a fisheries specialist with our Sea Grant Program, and a center for much of our activity with the commercial fishing industry.

Two years ago the University of Maine began re-evaluating its role in service to the people of the State of Maine. A primary outgrowth of that process has been the establishment of a Center for Marine Studies to be located on the Orono campus. Previous to this the Sea Grant Program has been one of the most active elements of the marine program at the University and certainly the element which has been most concerned with the commercial fishing industry and with the issues raised following extension of our fishery jurisdiction. As our Center for Marine Studies grows and establishes itself, the Sea Grant Program will continue to be one of the more visible and active segments with respect to commercial fishing. Similar program growth at the University of New Hampshire has been underway for some time. Today I comment from the perspective of our Sea Grant Program with its emphasis on people, on applied research, and on extending our educational program beyond the campus boundaries for the economic benefit of the coastal constituency.

The Fishery Conservation and Management Act of 1976 has changed two major and related aspects of fishing in Maine. First, it has very significantly altered the business climate for all fishing related businesses. In some cases the alteration to the business climate is clear. In other cases the character and direction of these changes is not clear. Secondly, the Act has created a new governmental structure, the Regional Fishery Management Councils. More than being just a new governmental unit, the formation of the Councils signal an attempt to manage a limited common property resource, the fishery, in a democratic rather than in a technocratic manner. As such, this represents a new type of management of a natural resource. This has required a shakedown and a new definition of roles for all fishery related governmental bodies. The rest of my comments today are a discussion of these two interrelated matters, the business climate and the new type of management unit.

Government plays a particularly important role in the fishing industry, certainly more than most fishery businessmen would like, whether they be fishermen or processors. Therefore the new governmental body and the resultant reshuffling of responsibilities has substantial implications for the investment climate in the fishery, and for the operating procedures at all levels of the industry. Given the very great importance of the fishing industry to both the social and economic structure of coastal Maine, these effects must be seriously considered, and in deed monitored in order that action can be taken if the industry needs assistance in responding successfully to these government-influenced changes.

Government involvement is an inevitable part of any industry that is based on a common property resource as is the fishing industry. Because fishermen have no ownership rights over the fish they seek to catch, what they do not catch is free and available to the next fisherman. This is to be contrasted to a farmer who, because he owns the fields he plants, can leave one alone to recover one year without worry that his neighbor will plant and reap the benefits from his conservation methods. Because of this difference, fishing pressure almost inevitably escalates at the expense of the resource. In most industries the free enterprise system leads a good businessman to protect his investment, to protect his resource. In a common property industry a good businessman cannot afford to do that. Therefore in fisheries, as in clean air, as in grazing commons, and in many other instances, government acts as a third party which makes external rules for the mutual benefit of the resource and the industry.

Nonetheless, it is important to point out that government-caused disruptions such as have occurred during the first year since implementation of the Fisheries Conservation and Management Act have a pronounced effect on business climate.

Low quotas, restrictive by-catch allowances, and the closure of the ground-fishery have been confusing, unexpectedly stringent, and in some cases have been a real hardship. This is true particularly for fishermen who have invested in new boats and for processors who have invested in new equipment. Recouping these investments, which have been made without the government money which so many people have been promised, has been made more difficult.

The New England fishing industry, the fishermen, have disproven the myth that they are backward and disadvantaged. They have responded to the opportunities created by the 200-mile limit and have invested in new and larger boats, many of which are already fishing. Even taking into account the unprecedented abundance of cod and haddock this year, the industry has shown itself capable of catching far more fish than most government people expected, indeed, in the short term, far more of some species than biologists feel can be supported. All of this, we point out, was done virtually unassisted. Therefore the disruptive effects of this year's regulation should be seriously considered. Initiative of this sort is something government usually tries to encourage. The hard facts of biological scarcity and species fragility are real and must be faced. However, regulation must be done in a manner that will be predictable and reasonable so that business initiative is not thwarted.

Virtually all the commercially important species of this state, with the exception of intertidal species such as clams, now fall under federal jurisdiction. Therefore, virtually no fisherman or fish business is unaffected. Any type of regulation is likely to favor one group over another. Regulating our New England regional fishery is indeed difficult. A simple yearly quota will favor the boats which can get out early in the year. They get the first try at the fish when they are abundant and when the schools are not broken up. The fishermen who for reasons of weather or a small boat, may even end up with no fish if the quota is filled before he starts fishing. Quarterly quotas which divide the yearly quota into four equal parts may put the fisherman who has only really profitable fishing during the summer out of business. Ill-considered closed areas may penalize the fisherman with a short range. Closed seasons may have the combined effect of quotas and closed areas. Mesh size restrictions may not be imposed sensitively enough to account for the fact that fish population may vary in size even at maturity from area to area.

Serious though this litany may sound, what is even more important for the fishing industry of Maine is that each one of these management regulations limits the fishing businessman's versatility. Versatility has been what has kept this state's fishing industry in business through the lean years when the fish stocks were so low. A fisherman's business success depends on his almost daily assessment of whether he is fishing the right species, whether he is catching enough, and whether the price is adequate. If not, he must change gear and technique to meet his investment and operating costs. Closed seasons, quotas, closed areas, limit the scope of alternatives available to him, and therefore limit his chances of making money.

Similarly, dealers and processors are affected. Seasons and quotas affect the flow of fish to the market. Because fish is perishable, uneven supply is expensive for a processor because he must invest in much larger capacity to handle the peaks. This investment may lie idle during an off season. New opportunities lie in the expanding world markets for fish which were previously caught by

foreign fleets off our shores. This requires new processing procedures for species new to our domestic industry. Because we are already fishing traditional species to capacity, shoreside development to serve these new markets is a prerequisite for any increased fishing effort.

This will require large scale investment which is not likely to take place in a climate of uncertainty. Herring may be used as an example. Stinson Canning Company has invested heavily in the adult herring business. Last year, National Marine Fisheries Service decided to give foreign nations an allocation of herring on Georges Bank on the grounds that only a few U.S. boats had the capacity to fish for herring that far offshore and that it would not be profitable even for those. The fact is that once a company has made a sizable investment, they may be willing to fish at a lower profit rate in order to keep the overall business operating. The possibility of government actions such as this clearly inhibit the large scale investment that is needed for shoreside support of the growing industry.

The upshot of this is that the 200-mile limit, while providing the promise of a good future, something which was impossible before the limit, has produced a business climate that can only be characterized by almost crippling uncertainty. No prudent businessman, looking for a place to invest, would risk his capital in an industry subject to capricious, unpredictable disruption by government.

Aside from the affect on business climate there are three other governmental actions which are affecting the ability of the fishing industry to make money. They are our tariff structure, our reluctance to offset Canadian supports for fish marketed in Maine and New England, and the international boundary negotiations with Canada now underway as a result of both nations having extended their jurisdiction to 200 miles. Let me touch on those three briefly.

Maine fishermen are seriously impacted by the terms with which the United States trades and deal with other countries. We have, for example, erected a tariff structure which is highly protective of some of our domestic industries. Unfortunately, Maine fishermen are heavy purchasers of the products of these industries from foreign firms and as a consequence must pay substantially higher prices for their inputs than foreign fishermen. The burden of these higher prices is estimated to be the equivalent of a 20% tax on value added in some cases. It is unlikely that any other industry is harmed so greatly by the tariff position of the U.S. government. This harm is compounded by the fact that the major international competition of Maine fishermen, both on the ground and in the market, is faced with no comparable tariff burden. Canada saw fit to eliminate all tariffs on fishing inputs in 1966.

Another international aspect of the economic problem faced by Maine fishermen is foreign government assistance to their fishing fleets. Usually governments like Canada give such assistance in order to promote jobs. The unfortunate secondary result for Maine is that the products of their industry come into the U.S. market at prices usually well below those at which Maine fishermen can afford to produce. Depending on the species and degree of processing Canadian fish is subsidized approximately 20-30c per pound. The Federal Government *does* have procedures for off-setting these unfair competitive situations which arise with regard to international trade. It has not chosen to use them. The health of the fishing industry is dependent upon even handed support from the Federal Government.

Today in Washington the U.S. and Canada are engaged in treaty negotiations which will determine each country's share of the resource in the Gulf of Maine and on Georges Bank and the method by which the stocks of certain important migratory species will be jointly managed. In addition, there will be discussion which may affect the future basis of competition between U.S. and Canadian fishermen in the market. This is an opportunity for the Federal Government to favorably affect the future of the industry and we urge you to carefully review this treaty when it comes before the Senate.

I would like to move now away from a discussion of government's effect on business climate, to a discussion of the new management structure, though the two are clearly related.

Given adequate assistance, the regulatory structure established by the Fisheries Conservation and Management Act need not make capricious, unreasonable regulations. Clearly, that is no-one's desire. Few people who have been involved during the last year feel encouraged by the confusion and resulting regulation that has actually taken place. However, the structure for making management



decisions under the FCMA is a good one. It is the first time that fisheries rules have been made in a democratic rather than a technocratic way. The Act encourages participation by everyone involved: fishermen, dealers and processors, scientists, managers and more. No longer is the industry relegated to advisory and reactive roles. Their participation in the actual drafting of regulations is required.

This is putting new demands on everyone. It is therefore no surprise that there has been misunderstanding and confusion from all sides. What we suggest is that this is not a situation to blame on anyone; it is a function of this new democratic process; and it will require active assistance from Congress if the process is to work as they intended.

As the fishing industry needs assistance, for instance, in terms of shore facility construction, the government structure also needs assistance. That assistance is needed primarily for development of increased information, for increased communication, and for increased liaison. The difficulties of making management decisions democratically in a group as diverse as the one embodied in the Council and the public which regularly participate in their meetings should not be underestimated. Homogeneous groups make decisions more easily than heterogeneous ones. The fisheries community is an extremely heterogeneous one and therefore, the more information that is shared among them, the more easily they will understand each other and make decisions together. This is where liaison, translation, and communication become of paramount importance.

First, more information is needed. More species are being managed than ever before, and the management is being more finely tuned than the simpler yearly quotas which were imposed under ICNAF (International Commission on Northwest Atlantic Fisheries). This means we need even more biological information than was needed before. Previous to passage of the FCMA, most of the biological research for the Northwest Atlantic was done at the Northeast Fisheries Center in Woods Hole, a laboratory run by National Marine Fisheries Service. They have established all of the background work on the important species off New England.

I would like to share an example which demonstrates the need for increased biological information to the fishing business of this state. I again refer to herring. Last year, on the basis of the National Marine Fisheries Service biologists' determination that there are at least two stocks of herring in the Northwest Atlantic NMFS decided that there was surplus herring available for catching by the foreign fleets. The reasoning was that since U.S. boats traditionally have not had the capability to fish offshore on Georges Bank, the Georges Bank herring would be going unexploited. The U.S. boats traditionally fish in and on what is considered the Gulf of Maine stock.

It is a matter of history now that the state of Maine went to court to challenge this two-stock theory. Maine maintained that there is one stock of herring. Thus any fish caught offshore by foreigners would not be available eventually inshore to Maine boats. Subsequent research, although by no means conclusive, indicated substantial intermixing of stocks. Therefore it is indeed possible that foreign boats were catching fish that would have come into the Gulf of Maine.

In difficult situations such as this it would be nice to compare several opinions. The Fishery Council is attempting to do just that. Because the National Marine Fisheries Center has a limited budget the Council has approached Universities asking them to channel their expertise into areas which will later help the Council. Given the prominence of fisheries in this state, the University of Maine has begun analyzing its capabilities for meeting those needs.

Universities bring a special element to research, that of rigorous peer review. The practice of publishing research results in referred journals ensures that scientists throw their ideas and conclusions open to criticism. The resulting competition provides a unique method of quality control, and for the sawning of new ideas.

The Universities of Maine and New Hampshire have made the hard decision to preferentially move money into the marine area. Their budgets, as with other Universities, are severely taxed. The research budgets for the National Marine Fisheries Service and for the state management agencies are also taxed. Much is not known about the complicated ecosystem of the Gulf of Maine and of Georges Bank. Increased knowledge will be critical to Fisheries Council and subsequently to the fishing industry. We encourage the Congress to provide the developing councils with this needed information.

Because the Fisheries Conservation and Management Act requires that management of the fishery be accomplished in a way that preserves the economic and social health of the industry while protecting the fish stocks as well, accurate and adequate information concerning fishermen and fishing businesses is as necessary to the Council as is biological information. Earlier I touched on some of the complexities of preserving the economic health of the fishing industry.

Thus if the hard biological facts point to a need for substantial recovery of a particular fish stock, the hard economic facts may dictate that the recovery process move ahead slowly because fishermen's livelihoods depend on their ability to catch fish. The Management Councils will often find themselves trying to determine a very fine line which will meet both needs.

Marine research in the socio-economic field has been minimal. Universities, the National Marine Fisheries Service, and the state agencies again must be given the resources to respond to this need for information.

Money alone will not be adequate to ensure the supply of socio-economic information. The information cannot be gathered without the assistance and participation of the fishing industry. This brings us to the point of communication needs in this democratic management process. The Council needs to know how many people are involved in what fisheries, when, and to what extent. They need to know what the crucial factors are in their basic business decisions in order to accurately project the effects of proposed regulations.

The list could go on. However, the point is that this research cannot go on without the active participation of the industry. And the industry will not provide the needed information until 1) they understand how it is being used and 2) have faith that their willingness will not backfire in more stringent regulations.

In the same way, scientists of all sorts need to listen closely to the industry. Fishermen make their living by accurately observing fish and making and testing theories about their behavior. From a scientific standpoint their knowledge is a resource that scientists and the government managers cannot afford to ignore. An example of this is again the herring case. Fishermen suggested, contrary to scientific belief, that herring migrate around Cape Cod and clockwise around the Gulf of Main each season. When research was done on this last summer, preliminary reports indicate that the fishermen were right.

The management process set up by FCMA is complex because of the numbers and types of people involved. The numbers make the need for communication greater and make it more difficult. Clearly there is a need for translation of each group's body of knowledge into terms that make it useful to the others. In this way, fishermen and scientist alike can participate more productively.

Listening to and understanding both, the managers can learn about the industry they serve.

Without adequate information, without good communication and liaison among all participants, the process of managing the fishery democratically will continue to be a series of unproductive showdowns. But I sense that most of the elements and people involved in this new process, and they are many, want the process to work. With the continued support of Congress it can.

Senator Hathaway, Senator Durkin, you and the Congress have given birth to a precious child, one with much promise and with all the right attributes. It will need your continued watchfulness and nurturing. The democratic process is as difficult on the waterfront as it is in the Capitol. I hope what you are hearing here today will assist you in your job.

Thank you.

Senator HATHAWAY. Mr. John Sturgis, Chairman of the Portland Fish Pier Task Force.

#### **STATEMENT OF JOHN STURGIS, CHAIRMAN, PORTLAND FISH PIER TASK FORCE, PORTLAND, MAINE**

Mr. STURGIS. Thank you, Senator.

You were a daring man to even come over the road when you couldn't make it by plane.

As you all know, my name is John Sturgis. I am a resident of Portland, but I appear here primarily as Chairman of the Portland Fish Pier Task Force. My testimony is brief but I think it has to be made and become a part of the record.

Our task force has as its mission to study and seek to provide a major new fish pier complex on the Portland waterfront to accommodate what we hope will be the expanded needs for these facilities as the 200-mile limit results in a substantial expansion of our domestic fishing industry.

We totally endorse the principle of fishery management in order to secure the restoration of depleted species of commercial fish. At the same time, we hope that any program that is designed to achieve this objective is carried out in a manner that will allow our present commercial fishermen on the New England coast, and particularly those operating out of Portland, to remain financially solvent during this interim period when fishing operations are controlled by our Federal Government.

It obviously would not be wise for the city of Portland, in my opinion, to go to great lengths to establish a new fish pier complex for an industry which in this interim period becomes so damaged financially that they can't continue to operate. We therefore respectfully petition those concerned with the survival of this industry to pay careful attention to the need for our fishermen to be appropriately considered during this very difficult period of the rebuilding of stocks of depleted species of commercial fish.

We, at the local level, have listened carefully to our fishermen, considering carefully their comments and making sure they have input into our own efforts to revitalize the Portland waterfront with an expansion of accommodations for both our fishermen and for the associated industries so vital to servicing the fishing industry.

In a number of meetings which either I or our staff have attended, our concern for direct discussion and communication with our fishermen does not appear to be duplicated by the higher officials of the National Marine Fisheries Service and of its parent bureau, the U.S. Department of Commerce.

We respectfully suggest that attention be given by the highest authority possible to this apparent communication failure.

Senator HATHAWAY. Thank you very much.

You have received some funds from EDA, is that correct, to do a feasibility study?

Mr. STURGIS. We have or are on the verge of it to do a feasibility study.

Senator HATHAWAY. How long do you think that will take?

Mr. STURGIS. I'm optimistic. I hope by the end of the year we can have it happen.

Senator HATHAWAY. You are meeting every week?

Mr. STURGIS. Starting last February we met every Wednesday morning at 7:30 in the morning, 20 dedicated people, until we accomplished receiving the Federal allotment. Once we have it in hand we have various propositions presented to us which we are screening to determine who will make the study and we will move with speed.

Senator HATHAWAY. I wish you well. If there is anything I can do, I would like to help.

Mr. NEILY. We are conducting interviews with 13 major technical concerns and reducing them to six or eight, and at that point the Fish Pier Task Force will move into session and review the final lists and

choose the firm to carry out the technical study that has now been funded.

Senator HATHAWAY. Thank you very much.

The next witness is Cyrus Lauriat, Boothbay Region Fish and Cold Storage.

**STATEMENT OF CYRUS LAURIAT, BOOTHBAY REGION FISH AND COLD STORAGE, BOOTHBAY, MAINE**

Mr. LAURIAT. Captain Kelly covered everything I have to say, and in the interest of time I think his speech included everything I had to mention. So I will pass.

Senator HATHAWAY. Fine. Thank you very much.

Mr. Tom McGough, foreman, United Fish Company. Is Tom here? Charles Remmel, attorney for Thompson, Willard and McNaboe.

**STATEMENT OF CHARLES REMMEL, ATTORNEY**

Mr. REMMEL. I'm here testifying today on behalf of the Casco Bay Fisheries Cooperative, which represents among its members most of the ground fishermen of the upper portions of Casco Bay, and the Great Eastern Fish and Lobster Company, which is becoming one of the largest fish-buying stations for domestic fish in the State of Maine.

I have submitted a prepared statement, which I won't follow because it is extensive. There has been a long discussion here on the quotas and I think the position of the fishermen is that the quotas are basically an aftermath of a disastrous fish policy by the United States in the last 25 years.

In a very thumbnail sketch, what happened is that the United States has maintained a very low fish tariff on imported fish. The result has basically been that foreign fleets have competed for the domestic fish market.

Following World War II, when the economies of Europe were particularly in need of export dollars, they subsidized their fleets to go into direct competition with the United States fleet because they were interested in getting a share of the lucrative U.S. market. The fleets of Canada and Iceland, which had greatly expanded during World War II, were looking for an outlet for their fleet, and the result was that everyone was in the same market—only the U.S. fisherman was at a drastic disadvantage because he was not subsidized by his government.

For a while that situation managed to stagger on with the U.S. fisherman reduced to catching fish for the frozen-fillet markets and the fresh-fish market, which was not taken over by the foreign fleets. Also the foreign fleets were primarily concerned with fish species which were not necessarily the prime focus of the New England fishermen.

Around in the late 1950's and early 1960's that process began to change. Because of decreasing catches in the Grand Banks, the foreign fleets began to move onto Browns and Georges Bank into the preserves of the U.S. fishermen. When they got finished taking the herring and whiting and hake products for which they fished, they turned to the species fished for by the U.S. fishermen, the cod and haddock and some

of these types of species. The result was disastrous. The stocks have been depleted; and now, after all that has happened, then the Government finally turns around and says, we are going to now impose a quota on you based on the aftermath of a fairly disastrous policy for the New England fleet.

There comes a time at which the policy considerations have to be reversed in favor of the U.S. fleet, and I think the time has come: the 200-mile limit will not change things for the U.S. fisherman as long as the quotas are allocated in such a way that the foreign fleets share in those quotas with the U.S. fishermen.

All of the testimony of the fishermen today could be summarized to say, if you are going to allocate quotas, allocate them in a way that maximizes the catch potential for the U.S. fleet and takes it away from the foreign vessels.

Senator HATHAWAY. The law provides for the foreigners to take only what the United States can't take.

Mr. REMMEL. But the way the quotas are managed there is some question as to how efficiently that is done. Even some of the quotas in the species which are not traditionally fished for by U.S. fishermen deserve to be examined.

If you are going to have a large foreign quota in herring and a large foreign quota in hake, these are all part of the fish cycle, and it may be that some of the fish which are more directly the ones that New England fishermen fish for are going to be affected by those large quotas in other incidental species.

I want to mention one other point. I think it is important. When you were discussing before the question of the tariff structure, you mentioned why didn't the fishermen get together and petition the Government to do something like that?

There is a history of that happening in the early 1950's. It never reached anything to help the New England fishing industry.

Senator HATHAWAY. The Trade Act has been changed. Amendments of 1974 broadened the complaint procedure so that it is easier to challenge imports than it ever was before in our history.

Mr. REMMEL. That may be—

Senator HATHAWAY. The shoe and other industries have challenged and received relief under them. There have been countervailing duties imposed as well.

Mr. REMMEL. Part of the problem you will have is, because of the fact that large-scale domestic processors are buying from the foreign fleet because they want to be assured of a steady supply of low prices, you have now created a cleavage between the fishermen who would want to restructure the tariff arrangement, and the large-scale processors who will be resisting that very effort.

Senator HATHAWAY. We had a similar problem, as you may know, in the shoe industry. A lot of the shoe people had gone to buying imports.

Mr. REMMEL. What I would like to turn my attention to now would be specific programs which the Maine fishermen feel would be beneficial to them. Some of this is being accomplished under the quota system. One of the things they would naturally expect to have happen is for the quotas to be adjusted quarterly to increase the U.S. share of the fleet to maximize their catch potential, and the proportionate share of the foreign fleet be reduced as the U.S. quotas increased.

The other problem that you have right now is that the quota on some types of fish is imposed on a per-day basis, so many pounds per days, and we feel it would be better if the quota was imposed on a per-trip per-man basis because this favors the efficient fisherman. If he can catch that quota in two or three days, he should be able to land that, and go out again, as opposed to having a per-day quota on cod and haddock, which means you can catch so many pounds per day no matter how long you stay out. A fisherman could catch that quota in his first couple of days out, and then he will be in the situation where he has to go for incidental catches of fish that may not bring a high enough price. If those quotas on cod and haddock were managed the same way as the quotas on yellowtail flounder, it might favor those fishermen who are more efficient.

The Maine fisherman has continuing costs. Those costs, when you start imposing quotas which reduce his potential to generate income, are going to basically drive him out of business, as long as those quotas get too low. Congress has to be aware of even a change in a quota of 1,000 pounds per day, for example, may be the difference between the survival and the eventual extinguishment of this industry. It is a very close question.

I think the error should be committed on the side of the fishermen and not on the side of conservation because, after all, we are trying to preserve an industry here.

Senator HATHAWAY. Have you discussed your plan with the fishermen? It seems it might favor those who have available capital to build more efficient ships that we don't have in the New England area at the present time. You wouldn't really be basing it on the efficiency of the individual fisherman with what equipment he has. If you do it that way, it might work out well.

We had earlier testimony from Captain Kelly about the boats that can go out more than 50 miles.

Mr. REMMEL. The comments I am making today occur after long discussions with the people I represent. They feel on a current per-day basis, there are a lot of people who go out, make their catch in the first day and they may stay out six days, perhaps. They say, why should we fish for whiting when if the quota were imposed on a per-man per-trip basis, it would be a more reasonable approach?

You mentioned the item of efficient vessels and the smaller vessels we have in the industry in Maine, which don't fish as far offshore. One of the programs we think should be considered would be a mortgage guarantee program, similar to the one that is being operated now, but would also underwrite the interest costs not only for the construction of vessels, but also for the purchase of existing vessels. And we think that when that program is put in operation, we would like to see it subsidize the interest rate to reduce the level of interest to the fisherman to about 3 percent.

Right now the problem with the mortgage industry is the banks are fairly reluctant to lend to fishermen except under a guarantee program. The banks regard loans of this type as a high-risk investment. The collateral they take must be foreclosed on with a public auction, and the poor liquidation results make the banks reluctant to grant these types of loans except if they are guaranteed by the Government.

If they make them on the private market they come at high interest rates, short-term money, which makes it difficult because of the debt service problem which comes on the other end. If a comprehensive mortgage guarantee program is put into place, we also feel it should be regionalized and tailored specifically to New England. The problem with the fleet mortgage acts of the 1960s, which was the subsidy vessel program, was I don't think it ever had a goal. It said, we ought to equalize the cost between what it would cost to build the ship in the United States and what it would cost to build it overseas. There was no real policy as to what type of vessels we were trying to subsidize, what area of the country we were trying to reach. A lot of that money was drained off to the West Coast, and large corporate concerns who had the sophistication to apply for that type of capital.

If there is going to be a vessel mortgage guarantee program which would subsidize the interest rates, the mechanics and operation of that program should be streamlined to assist, rather than discourage, the single vessel owner. Preferential treatment should be accorded to existing fishermen, and attribution rules should be established so that money is not drained off to large corporate fisheries and their subsidiaries.

Another area that deserves attention is the high cost of insurance. Right now the cost of hull insurance ranges from between 3 and 10 percent of the vessel each year. If you have a dragger in average condition, 50 or 60 feet long, you pay a premium of about \$3,000 per year. For P. & I. insurance, which is your basic liability, you are paying \$1,000 a man. You are seeing insurance billing of \$6-, \$7,000 a year. I think it would be helpful if the Government would consider a program of underwriting insurance costs in some way for the industry because this would be a helpful kind of endorsement for the program which would not involve the Government directly in managing who's going to fish and where they are going to fish and these other kinds of problems.

Senator HATHAWAY. As you know, this is a tough problem in regard to not only fishermen but product liability insurance. It is unobtainable by some small businesses; malpractice insurance, for which you may not have much sympathy—we should, too, because that is passed off to us as consumers in medical care—is getting sky-high. We have to probably revamp the limits of our liability or something along that line.

To make the Government an insurer of last resort or coinsurer of all of these areas would be difficult to do and extremely expensive. Not that I don't have sympathy; I have a great deal of sympathy.

Mr. REMMEL. The mechanics of how such a program would work are difficult in the extreme. I imagine the best way to approach it would be a subsidy for the costs of the private insurance industry, or an underwriting directly of the costs of the premiums.

Senator HATHAWAY. One of the best ways to do it would be with coinsurance because then you compete with the private industry and you bring down the rates. If the Federal Government is going to be the wastebasket and get the tough cases or the surplus, then the private companies charge whatever they want, give you the bad risks, and then the taxpayer is the insurer.

If the Federal Government is the coinsurer you have competition that the private sector won't want, but it would bring down the cost of insurance.

Mr. REMMEL. The fishermen feel that with the number of people employed by the Marine Fisheries Service that they could come up with a program that would benefit them directly.

Another problem is that of the tariff structures. The low tariff structure permits the direct competition to the subsidized foreign fleets. If this was happening in steel or another industry that had higher visibility from the point of view of the Federal Government, I feel that the dumping which is happening here would not be permitted.

Senator HATHAWAY. It has been happening with steel now and steel has been trying to get its way for a year and hasn't succeeded yet. They do have more muscle than the fishing industry.

Mr. REMMEL. The tariff structure should be revamped upwards to eliminate the differential that the foreign fleet gets from its subsidy from its home government. If that were done, I suspect that the New England fisherman could then begin to move into some of the other species which are currently being caught primarily by the foreign fleet. The foreign fleet, of course, brings in block and slab fish products at no tariff at all at the present time. This was removed in the 1964 Kennedy rounds of the tariff talks at the insistence of the large-scale bulk processors. I think this is something, that could become the province of the New England fleet.

The last specific program I would like to recommend would be that of the legislation which goes back as far as the 1800s relating to the importation of foreign hulls. Originally—

Senator HATHAWAY. 1795.

Mr. REMMEL. 1792, I think.

Regardless of the time, it was a long while ago.

The problem is basically that at the time that this was put in, fishing vessels and coasting schooners were lumped together. From the origin of that legislation, it appears that we wanted to protect the domestic shipping industry, and the fishing vessels got lumped into that at the same time.

Considering the condition of the fleet today, there doesn't seem to be any real reason why that restriction has to continue. This would help the domestic fishermen revamp the fleet as the impact of the 200-mile limit—assuming the policy considerations favor the U.S. fleet—allow it to compete economically and allow them to replace their existing vessels with updated equipment.

Senator HATHAWAY. Thank you very much.

I think on the business of the countervailing duties, that we ought to look into this further. I would be glad to talk to anybody privately afterwards to see how far we have gone. That is a good method for offsetting foreign subsidies.

Realistically, it would be difficult to repeal the law of 1792 or 1795. We have made modifications in it. Some of which or most of which the poorer fishermen can't take advantage of because they are not paying income tax because they did not make that much money.



It will be a long time before you see us allow Americans to buy foreign for commercial purposes.

Mr. REMMEL. Your remarks are perceptive because they get to the heart of the issue, which is the tariff structure.

It is my feeling, and it may be simplistic, but in some of these species, particularly the ones fished for by the U.S. industry, for every tariff increase of one cent you push up the domestic price a penny per pound.

It will be economically more feasible for the fishermen to go after that type of species. Their profits will be higher and the result is maybe they will go after some of the incidental species that are not popularly fished for now and eventually we can displace the foreign interests altogether.

Senator HATHAWAY. Thank you very much.

Mr. REMMEL. Thank you.

[The statement follows:]

STATEMENT OF U. CHARLES REMMEL, II, ON BEHALF OF THE CASCO BAY FISHERIES CO-OP, AND GREAT EASTERN FISH AND LOBSTER COMPANY, CUNDY'S HARBOR, MAINE

A basic understanding of the history of the New England off-shore fisheries since World War II is necessary in order to understand the positions adopted by the industry today. Prior to the advent of World War II, and throughout the war years, the domestic fishing industry supplied over eighty-five per cent of the domestic supply of fish, even though the domestic demand increased over fifty per cent between 1939 and 1945. The war years in particular, due to controlled steady prices, allowed the industry to partially refurbish itself in an atmosphere free from dramatic price fluctuations. During the same periods, the fishing industry of Iceland and Canada greatly expanded to meet the war food needs of England and its allies, whose own fleet and manpower were consumed with wartime activities.

At the termination of hostilities, America began to develop a post-war policy toward the various countries of Western Europe, including Iceland and Canada, whose economies had been severely strained or devastated by the conflict. America's interests were varied, but key among the concerns was to re-establish those economies as viable trading partners, and to preserve open market access for American goods and capital, with low tariff barriers. Even with such efforts as the Marshall Plan, these countries desperately needed to acquire export dollars and reduce imports, and among the ways to do this was to take advantage of the low tariff structure of the expanding U.S. domestic fish market. Marshall Plan funds went into shoreside development, freeing up capital to launch the subsidized foreign fishing fleets with which Americans must compete today. Iceland and Canada, whose wartime penetration into the European market was dislocated, turned their attention also to the U.S. market, providing a series of subsidies and incentives to encourage the penetration of this source of export dollars.

The results of these factors was to cause an immediate influx of foreign caught fish in the U.S. domestic market. New and larger foreign boats, many of whose basic construction and operating costs were subsidized, began to acquire a larger and larger share of the U.S. domestic market and play havoc with the domestic price of fish. As the prices began to fluctuate and drop, the attractiveness of investing in fleet improvements in New England naturally declined—a situation which exists today and explains, in part, the condition and age of the offshore boats.

Domestic processors, at the same time as the fleet was suffering, were still faced with an increasing domestic demand, which was further burgeoned by the market acceptance in the early 1960's of fish sticks processed from frozen fish blocks. With reluctance the large bulk processors began to sever their connection with the domestic fleet and turn to the foreign fleet for a constant, smooth supply volume at low prices. Domestic fishermen were now further isolated in the marketplace, and left mostly to supply fresh fish and frozen fillets.

The continued market penetration by the foreign fishing industry was, of course, dependent on the continuance of the low tariff on fish imports. New England interests protested this situation, and three U.S. Tariff Commission investigations were conducted under the escape clause provisions of GATT between 1951 and 1956. The last investigation in 1956 resulted in a recommendation 6-0 to President Eisenhower that the tariff structure be revised at least fifty percent upward as a minimum measure. Unfortunately America's larger global perspectives and an overall State Department policy of underwriting Western European economies, and maintaining low tariffs and free trade, influenced the President to deny the Commission's recommendation.

Even though the damage to the domestic industry was becoming increasingly clear (the New England fishermen's share of the domestic market had slipped from approximately eighty per cent in 1945 to about forty-five per cent in 1956), the government's rationale is reflected in the President's letter to the Commission of December 10, 1956:

As an aspect of national policy . . . this nation seeks to encourage in all feasible ways the continued expansion of beneficial trade among the free nations of the world. In view of this policy, I am reluctant to impose a barrier on our trade unless such action is essential to the industry in question . . . My reluctance to impose a barrier is heightened in this case because the other nations concerned are not only our close friends, but their economic strength is of strategic importance to us in the continued struggle against the menace of world communism.

In a word, the New England off-shore fishing fleet was expendable. We are reaping the results of that policy today. Approximately ninety per cent of the traditional New England market is controlled by foreign fleets today, and the U.S. currently incurs a trade deficit of over four hundred million dollars in groundfish. And in the Kennedy round of GATT talks in 1964, if the industry still had illusions about a change in policy, many of the tariffs were reduced, with the duties on frozen blocks and slabs, which are the principal mainstay of the foreign fishing operations, removed entirely. Now, unfortunately, the domestic large bulk processors were pitted against the fishermen themselves on the continuation of low tariffs.

Inevitably, a market and governmental policy of this sort became an invitation to a broader international community than our traditional allies. In the 1960's the fleets of the USSR, Rumania, East Germany, Poland and others appeared offshore and began to fish, not only for their domestic purposes, but also to gain a share of the lucrative U.S. market.

Such of the New England domestic fleet as survived these developments could still land for the constricted markets left to them. But the events set in motion by the government policy conspired even against this. In the 1950's and early 1960's, foreign fleets focused their efforts primarily on the Grand Banks off Newfoundland, or on fish species outside the traditional Cod, Haddock, and Flounder primarily pursued by New England offshore fishermen. Declining catches of other species, and overfishing on the Grand Banks themselves, caused the foreign fleets to move into the preserve of the New England fishermen, Georges and Browns Bank in particular, and pulse fish on a large scale for the same species as pursued by New England Fishermen. The effect was dramatic, and a rapid depletion of the fish stocks occurred. U.S. participation in the International Commission for Northwest Atlantic Fisheries (ICNAF) did little to solve the overfishing problem, and the result has been the imposition of the 200 mile limit and various catch quotas on both U.S. and foreign fishermen. Reciprocal to the U.S. action is the imposition of a 200 mile limit by Canada, which promptly foreclosed fishing by U.S. boats in many areas of Canadian waters.

With this background, it should be readily apparent why New England fishermen are critical of the quotas imposed on them, while continuing to allow foreign fleets to operate with large quotas in U.S. waters. They correctly perceive that the New England offshore fishing grounds were sacrificed unnecessarily. Now that the damage is done. New England fishermen are burdened by quotas left in the aftermath.

Nor will the 200 mile change matters a great deal so long as the fundamental policies of the U.S. government continue. The decision has to be faced to stop sacrificing the New England offshore fisheries to foreign concerns, and rather to foster the development and revitalization of the U.S. fleet at the expense of foreign quotas of fish. The U.S. must take steps to stop the intrusion of foreign

fleets into devastated fishing grounds, consistent with conservation principles, and to reverse a substantial and growing trade deficit in fish while supplying jobs and economic opportunities for the ports and harbors of New England. Policies derived from the immediate post-war concern with communism and the support of Western European economies are simply not relevant to the New England fishing industry today, and must be re-examined.

The critical policy directions will be reflected in large measure by the administration of the quota system. Many fishermen are pessimistic for any continued presence for the industry if current allocations and policies are not substantially altered. The New England fisherman is not subsidized, he owns his own boat, and has debt service, high fuel and operating costs, high insurance rates, and a delicate and fluctuating market outlet for his product. If his ability to earn is limited by too strict a quota, his ability to continue will terminate, and the industry as a whole will end. Any quota system imposed on New England fishermen must bear this in mind—the addition of even 1,000 pounds per day on existing quotas may be the difference between survival and destruction of an industry.

Maine fishermen do not wish to become handmaidens of the government, or trade their independent status for a wholly regulated, subsidized industry. They do believe, consistent with the free enterprise system, that the Federal Government can undertake a series of direct positive steps to aid the industry. They are as follows:

**A. Quotas.**—The allocation of quotas between the domestic and foreign fleet represents for policy makers a clear choice of favoring either the domestic or the foreign fishermen. It seems incredible that this should even be an issue, or that the New England fishermen must struggle with their own government to maximize the domestic industry's allocation. It is the position of Maine fishermen that the quota system should be allocated to permit the domestic fleet to achieve its maximum catch potential within the limits of conservation. The long term view should be to encourage the growth of the domestic fleet, with the necessary corollary that eventually the foreign fishing fleet may be displaced in large measure, particularly where much of the foreign catch is for the U.S. domestic market anyway. In the short run, quotas should be reviewed quarterly, and to the extent that the New England fleet has exceeded its allocation, the quota of the foreign fleet should be reduced in the following quarters to permit maximum catches up to the full potential of the New England fleet. This would permit continued conservation oversight, while establishing an obvious policy position in favor of domestic fishermen. After such a policy is adopted, care should be taken to monitor the entry of foreign interests through acquisition of U.S. subsidiary corporations.

Under the current quota system, changes should be undertaken to increase immediately U.S. quotas of Cod, Haddock, Flounder, and other favored species. Further, catches for all controlled species should be on a per man per trip basis. The per man per trip approach permits fishermen who are more efficient to obtain higher catches, as opposed to the limited per day quota now used for Cod and Haddock.

Finally, the conservation policy must keep in mind the entire food-chain cycle as it relates to the domestic industry. Permitting large foreign quotas on herring, whiting and other such species not ordinarily sought by New England fishermen, on the supposition that these are not important to the domestic fleet, may be short-sighted, and encourage depletion of species important to the domestic fleet which feed upon these fish.

**B. Tariffs.**—As indicated above, the current tariff structure on imported fish is the keystone of U.S. government neglect of the New England fisheries. The tariff structure should be completely overhauled, and new substantially higher tariff levels imposed. The tariff structure should at a minimum be at a level which will off-set the competitive advantage gained by subsidization of the foreign fleets. The resultant increase in the price of raw fish will increase the profitability of the New England fleet, whose prices for fish have long been artificially depressed.

**C. Vessel Mortgage Guarantees.**—One of the largest expenses of the Maine fishermen is debt service for the purchase, improvement, or construction of fishing vessels. On the private money market, purchase money or improvement rates are typically high because of the age and condition of the vessels. In addition, security for the loan is usually a mortgage under the Ship Mortgage Act, 46 USC 921, et. seq., which requires court intervention and public auction of the

vessel. The return to lenders on public auctions of vessels has been horrendously low. The result is that Marine banks are reluctant to lend to the industry for the most part, and then treat the loans as fairly high risk investments.

Maine fishermen would favor a program of guaranteed mortgage loans with interest subsidies (to reduce the rate to them to three percent) for not only construction but also purchase and renovation of existing vessels, and gear acquisition and replacement. Such a program would necessarily have to avoid the problems encountered in Fleet Improvement Acts of the 1960's, which failed to establish either goals or priorities to be achieved, with the result that New England profited little, and what did reach New England was absorbed by larger corporate interests or in the *Seafreeze Atlantic* fiasco (two-thirds of the New England subsidy money was absorbed in construction of an experimental, but unworkable, stern trawler).

The program should thus be regionalized and that portion applicable to New England tailored to its specific needs. The mechanics and operation of the program should be streamlined to assist, rather than discourage, the single vessel owner, preferential treatment should be accorded existing fishermen, and attribution rules should be established to insure that an inordinate amount of the money is not drained off to large corporate fishing concerns and their subsidiaries.

D. *Hull and P. & I. Insurance.*—One of the largest recurring operating costs for Maine fishermen is insurance charges. Hull insurance, depending on the age and condition of the vessel, ranges from three percent to ten percent of the value of the vessel per year. A typical wooden Maine dragger in average condition, sixty feet long, can expect to pay in the neighborhood of \$3,000 per year for hull insurance. In addition, P. & I. (liability for personal injuries onboard) costs approximately \$1,000 per man per year.

A government insurance program to lower extreme costs for hull and P. & I. insurance would be of substantial assistance to the Maine fishermen. Such a program should also encompass coverage for gear losses for which there is no private coverage whatsoever at the present time.

E. *Importation of Foreign Vessels.*—In legislation extending back as far as 1792, the Federal Government has prohibited the enrollment of foreign built fishing vessels in the domestic fisheries. The origins of this legislation is murky, but was assumedly designed primarily to protect U.S. shipping in carriage of goods between U.S. ports, since fishing vessels and coasting traders were lumped together at the outset. The legislation is of dubious value today as applied to the U.S. fishing fleet in need of rejuvenation. The restriction should be eliminated.

Senator HATHAWAY. The last witness scheduled is Ed Bradley, Assistant Attorney General for Marine Resources.

I want to commend the witnesses for the brevity of their statements. If there are any others here who want to testify you may come down here and I will hear your comments.

#### STATEMENT OF ED BRADLEY, ASSISTANT ATTORNEY GENERAL FOR MARINE RESOURCES

Mr. BRADLEY. Thank you for this opportunity to express my concern.

As you know, the State of Maine has had one experience with the administration of the bill which caused it to seek relief in the federal courts. As a result of that experience I would like to share with you some of the information which we have learned.

Senator HATHAWAY. Go ahead.

Mr. BRADLEY. Most of the concerns that we have had related to the administration of the bill related to the way in which domestic fishermen and foreign fishermen receive their allocations under fisheries management plans.

Most of these concerns relate to the way in which the optimum yield is determined. For that reason I would like to review a minute what optimum yield is. It is defined as the amount of fish which provide

the greatest overall benefit to the nation which is based on the maximum sustainable yield as modified by relevant social, economic and ecological factors.

The primary responsibility of the councils and the federal government in establishing preliminary management plans or final management plans is to determine this optimum yield. After it has done that it determines U.S. harvesting capacity which it subtracts from the optimum yield in order to determine what surplus is available to foreign nations.

As a result of our litigation there have been demonstrated two areas in which perhaps there is flexibility in the law which permits an interpretation of optimum yield and U.S. harvesting capacity which works to the disadvantage of U.S. fishermen and works in a manner which, I believe, is inconsistent with Congress' intent to benefit the domestic fishing industry.

The first is the matter of what factors are relevant in determining optimum yield in the first place. You start with maximum sustainable yield which is the conservation basis or baseline for determining the amount of fish taken from any stock. The question is what factors permit you to modify that basic conservation baseline.

It has always been our understanding from the Fisheries Act and its legislative history that the factors that would permit you to modify are factors which are limited to the overall benefit of the United States, that is to our fishermen, consumers, and to other interests of the United States.

In fact, in the administration of this bill the National Marine Fisheries Service has interpreted optimum yield in a manner broad enough to permit them to take into account the economic concerns of foreign nations in determining what the optimum yield is in the first place. This has the result of placing foreign nations in line at the same time U.S. fishermen get in line in determining the amount of fish that can be taken from stock.

It means the word "surplus" has no meaning at all.

If you can put the foreigners in line at the same time we do and put the optimum yield levels high enough, then the foreign nations don't worry about what you are subtracting as U.S. capacity because the optimum yield level is high enough to insure that foreign nations will always get a piece of the pie after U.S. harvesting capacity is subtracted.

I think that in—if what you are doing, and I believe it is, is reviewing this bill to see where it could be tightened to benefit the fishing industry, this is one fairly small area which could have a dramatic effect on what will happen. In the sense that all you have to do is make a small amendment to the definition of optimum yield which would indicate that the relevant social and economic factors that benefit the United States do not include those that relate to the economic benefits that would accrue to the foreign nations.

The second point I want to make relates to the definition of U.S. harvesting capacity. The legislative history of the act indicates that what U.S. fishermen will harvest should be based on their physical capacity to catch fish and their desire to catch fish; in fact, the Federal Government has interpreted that term, that U.S. harvesting capacity should be based on the demonstration of what U.S. fishermen have

caught in the past and what is profitable for them to catch right now based on determinations of what is profitable for the private fishing industry.

In the State of Maine investment in the herring fishery justified an offshore fishing effort despite the profitability analysis conducted by N.M.F.S. In this case U.S. fishermen intended to fish offshore and backed that intention up with a cash commitment, but N.M.F.S. would not recommend a quota high enough to recognize that investment because of its judgment that the effort would not be profitable.

This interpretation creates a stifling economic effect. People will invest, as they did on the coast of Maine in the past year, millions of dollars in a specific fishery in anticipation of a quota that will be allocated in response to U.S. harvesting determinations. They will not be allocated that quota until a year after the season in which they have demonstrated on the grounds their ability to catch the quota or until a year in which the Federal Government analyzes their business practices and the market climate and says in fact the private effort is going to be profitable.

The result is a lag at least of 1 year, perhaps, or more, after which investment has occurred, but before which fishermen can demonstrate their ability to catch. In fact, the quotas will be less than they have physical capacity to catch for and have demonstrated the investment and positive and concrete intention to catch.

Again, this is another area in which the bill has flexibility or room for administrative discretion or interpretation which has been exercised in certain cases against the development of the U.S. industry which could be cleared up by a small amendment in the act which indicated that investment of a certain kind would be concrete enough to justify an administrative determination that a U.S. harvesting capacity did in fact exist.

The last comment I would like to make is one that is really technical and legal. This is that in the section of the act which provides for the right to a remedy for fishermen or other people concerned about decisions that had been made, either by the Federal Government under preliminary management plans or by Council under final management plans, there is a provision which says that the injunctive relief provisions of the Administrative Procedures Act are not applicable until a court determination is made.

That makes sense because you don't want to go in before there has been judicial determination and stop the regulation because the conservation principles would be destroyed.

On the other hand, there is a possible interpretation of that which says that injunctive relief will not be available until all appeal routes have been exhausted. Because of the very limited time available that is in the fishing season, that is unrealistic.

While there is no judicial decision on this point there is a strong possibility that no court will provide injunctive relief until the final appeal routes have been exhausted, including Supreme Court review, if either party chooses to go that far. The result would be that no fisherman would obtain relief in any realistic way until all appeals had been exhausted, which would not give relief in time to be effective in any one fishing season. The administrative avenue of the next plan be-

ginning to realize more and more the nutritional needs of the people of this country. And as that realization increases, I think the fishing industry will see a great deal more attention than it has in the past.

Mr. JORDAN. "Subsidy"; isn't that like unemployment? I don't think the fellows want that. They want to go to work.

Senator HATHAWAY. I don't know whether you remember me or not when I was attorney for the Small Business Administration here in the state, and went around and talked to many of you on disaster loans, 2-percent loans because of storms. And I can say quite honestly that I never met a group of people more self-reliant than the Maine fishermen. And honest, I might add.

I remember some of them asking me why I was checking registered deeds to see if there were liens on their ships. They could have told me that without my checking, and they did.

Dr. Anthony, did you want to answer any of the charges made about Vinal Look?

Dr. ANTHONY. If I can have a moment, I want to go back to the problem about communication. It shows up here again as well. It is a good point to bring out.

You made the statement that one man has the responsibility of opening the shrimp season. This is not the case. The Atlantic States Marine Fisheries Commission has a committee of members from Massachusetts, New Hampshire, and Maine, which has the say for setting the season, open or closed, on shrimp.

If it were Look's proposition, he may go for an open season. I go on record as being opposed to an open season on shrimp because of the low abundance we have in shrimp. We have a population now of 1 to 2 million pounds of shrimp from a high of 60 million pounds in 1972.

In a year we think water conditions will be favorable. If we want the shrimp to come back, I think we should maintain a population at a reasonable level so it can come back. It will come back quicker if it has something to come back from. We have 2 million pounds of shrimp out there.

Mr. JORDAN. How do you know we have 2 million pounds? 15 years ago I got 300,000 pounds of shrimp. I had to wait 4 days before I could go out again.

The restaurants had menus built up around those shrimp. That is the tristate law. If the other 2 States don't enforce their regulations—there are boats in Gloucester selling shrimp in New York all summer. You can drop out and go on your own.

Dr. ANTHONY. It is illegal.

Mr. JORDAN. If one guy fouls up, the law is abolished.

Dr. ANTHONY. Technically, that has not happened.

Senator HATHAWAY. It is difficult for the reporter to get this if both of you talk at the same time.

Dr. ANTHONY. This is a 3-state pact. The point is, I think we should have had management of shrimp 4 years ago—as a biologist; I am not talking as an economist. If we open a season, I think it would have to be strictly on economics.

We did make some tows in the location you gave us, Peter, last week, in Portland here. We got 22 pounds of shrimp. Every evidence we have from the assessment we have done to date—and the decline we have known about for 4 years is taking place—it is obvious to every

fisherman that the shrimp population is down. And we are going out there next week, and we will continue to monitor the area. But all of the indications are that there is little shrimp there.

The point of view from the biological end is that if you knock the shrimp population down to a lower point, it will take that much longer for it to come back.

Mr. JORDAN. How come they caught them down Nova Scotia last winter and shipped them in here?

Dr. ANTHONY. They caught shrimp on both sides of Anacostia Island. They caught a couple million pounds, which were landed in eastern New Brunswick.

Mr. JORDAN. Back to the Bureau of Commercial Fisheries and Woods Hole, they had a vessel in here, \$3-, \$4-million—

Senator HATHAWAY. This is a state matter as far as the shrimp is concerned.

Mr. JORDAN. They are not sticking to the rules, sir.

Senator HATHAWAY. You have to take that up with the state.

Mr. JORDAN. I won't go shrimping. Now, these small lobster boats could get a good living at it. Where were these biologists and these fellows 15 years ago when we had to go out with the process of elimination and get these shrimp?

The Bureau of Commercial Fisheries had a \$3-million boat here. We were there 6 months or a year, Senator. All of a sudden, who comes up with an albatross? He sets out; next thing I know, he says in a letter, "Here is where the shrimp are."

We had been catching them there a year before I got the letter. I went down and I saw the skipper of the boat; he had a beautiful job. He said, "Tommy, I have the shrimp for you." He said, "I have 2,500 pounds." This is the guy you are taking your statistics from.

"Where did you get them?"

"Southeast."

One of the crew on there owed me money.

I said, "You have a few shrimp the other day?" "300 pounds."

The captain said 2,500, and the crew member said 300. He is phoning in the statistics to Woods Hole. That is what you are basing your data on. It's not right.

Senator HATHAWAY. Thank you very much.

Is there anybody else who wants to testify?

VOICE. One of the things is this quota system, and how it is going to—that will take a lot of day's fishing time away from us in a year. For this reason, most fishermen today haven't noticed that here in the State of Maine. If they figure their daily workday out, we don't get 140 to 160 days' fishing time a year; that is ground fishermen.

Now we have holidays. And the main thing, the prices go up when we can't fish because of the foreigners. And then we have weather, and the quotas come in, and we lost 8, 9, 10, 12, 15 days every quota, and we will be knocked down to 100 fishing days each year to pay these bills we have to pay.

I have been a gill-net fisherman for 25 years.

You couldn't catch nothing but 25 pounds of ground fish today. Then they made a tremendous comeback. They didn't do it with biologists. Two boats go around, drag a net, and say, "There is no fish here. The



stock is bad." Did they do that in the fifties to compare what the difference was then? We didn't catch nothing in; that is pollack, hake, haddock, codfish.

Another thing they don't take into consideration is the Government has to do this and this, and the State has to do this. Mother Nature has a great deal to do with the way those stocks are. When the fish are spawning, temperature has a great deal to do with how they survive. Back 4, 5, 6 years ago we had two hot summers here in late spring and summer where the temperature was 70, 80, 90 degrees. Two years before that, we had cold winters.

Our fish here are coldwater fish, and their temperatures have to be right for survival. Then all of a sudden here a few years ago, after the big boom, the early and middle sixties, we had a slack spell. That is when the temperatures were bad.

Now we are getting a comeback. All of the time when those things were going on, we were making record catches of codfish and haddock. Temperature has a lot to do with what is going on, and there should be more research done into it.

There should be more research done into it. We didn't have a lot of laws to say you can't catch this codfish because there is none here. We knew there was none there. We weren't catching any. How did they make their comeback? They had the right years, right temperatures, and the stocks came back.

It wasn't because of Government controls. Those bums making the tests today, were they making those tests in the fifties?

The last thing I would like to say is our PI insurance is high. If we took our men and they had a survey done on it, they would find out our rate of injury is minimal.

I think the Maine fisherman does an excellent job of taking care of himself. When he is working he is going up and down 30-, 40-, 50-mile breezes and he has nothing to hang on to. Yet we have to pay \$1,000 for our insurance.

To get back to the quota system, I would like to refresh your memory. When this quota system goes into effect, most of these captains haven't realized they are only fishing 140 to 160 workdays a year.

Senator HATHAWAY. Thank you very much for your testimony. I appreciate it.

Again, I want to thank all of you who testified for keeping your statements brief, but right to the point.

I assure you that Senator Durkin and myself, as well as Senator Magnuson and the other members of the Commerce Committee are interested in what you said, and will do everything we can to implement the suggestions you made.

The hearing will now adjourn, but we will be holding more hearings on the same matter in a couple of months. And in Washington they will be holding hearings on the financing, in particular.

Thank you.

[Whereupon, the meeting was adjourned.]





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